

# Nottinghamshire School Disciplinary (Capability) Procedure

## September 2024

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## HR Advice, Support and Training Service

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# **SCHOOL DISCIPLINARY (CAPABILITY) PROCEDURE – Updated September 2024**

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Please also note that any changes to the original policy documentation will require your governing body or trust to re-consult with the secretaries of the recognised trade unions and staff in your school.

## **Introduction**

- 1.0 All maintained schools are required to have a capability policy. The Governing Body of the school has approved and adopted and will review and monitor the impact of the policy annually with the head teacher. The next review will take place as indicated in the document.
- 1.1 The governing body has adopted the policy/procedure along with guidance and toolkit to provide an agreed framework for the exercise of its powers and discretions in relation to all staff employed in the school and paid from within the school budget. The term "capability" is defined as the ability of an employee to perform their duties to the required standard. The school will encourage and remind all employees of the support available to them from within the school and from their trade union. The application of the policy will be in line with the agreed protocol between the local authority, the head teacher, the governing body and the trade unions.
- 1.2 The governing body understands its responsibilities and is committed to taking decisions in accordance with the principles of public life as listed in DfE guidance; with objectivity, openness and accountability. Governing bodies should ensure that they are fully aware of their responsibilities under employment law in applying this procedure.
- 1.3 The governing body recognises the legal requirements placed upon them by the Education Act 2002 and subsequent legislation. This document will apply to all staff, including apprentices, directly employed by the school.
- 1.4 The governing body delegates to the appropriate Committee of the governing body, as indicated in the policy, the responsibility for approving decisions relating to this policy/procedure.
- 1.5 References to the governing body should be taken to refer to the entity that is responsible for exercising governance functions for a maintained school or academy, which in the case of a multi-academy trust may be the trust board. Likewise references to governors should be taken to mean whoever is

responsible for fulfilling governance functions. Where maintained schools are federated under a single governing body this will be the federated governing body.

- 1.6 In fulfilling staffing responsibilities, the governing body may delegate its staffing functions in accordance with its articles of government. In delegating functions, the governing body must not lose sight of the fact that it retains overall accountability for the decisions made by those to whom the function has been delegated. As a result the governing body should regularly review their arrangements for managing staffing functions and that the right people are fulfilling these roles on its behalf.
- 1.7 The School Staffing (England) Regulations 2009 confers the right of the County Council to send a representative to all proceedings of the governing body of a community or voluntary controlled school relating to the selection or dismissal of any teacher (including the head teacher and deputy) to offer advice. If the County Council decides to send a representative they must be allowed to attend. Any advice offered as a result must be considered by the governing body (or those to whom the function has been delegated) when reaching a decision. This will usually be a HR Business Partner from the HR Service who may also advise the governing body/head teacher as appropriate. The same rights do not automatically apply in respect of maintained foundation, voluntary-aided and foundation special schools.

### **Advice, support and Training**

- 1.8 It is the responsibility of the head teacher to ensure that all relevant senior leaders understand their role and have access to appropriate support, advice and training in the application of these procedures. The head teacher should also ensure, in conjunction with the chair of Governors and the training co-ordinator, where appropriate, that in discharging their duties and responsibilities, governors have access to support, advice and training as appropriate.

### **Consultation and Agreement with the Recognised Trade Unions**

- 1.9 The Nottinghamshire School Disciplinary (Capability) Policy/procedure is recommended for adoption by all community, voluntary aided, voluntary controlled, academy, foundation, and trust schools who purchase their HR Service from Nottinghamshire County Council.
- 1.10 The following trade unions have been consulted and the documents agreed with the following Nottinghamshire recognised trade unions: NAHT, NASUWT, ASCL, UNISON and GMB. The NEU have been fully consulted and have contributed to the final policy document.
- 1.11 Due to the complexities of this area of employment and education law, governing bodies are strongly advised to adopt the attached policy without amendment. Should, exceptionally, a governing body seek to amend the recommended policy, they will need to consult/negotiate any changes collectively with all the secretaries of the recognised trade unions and confirm

any amendments to the local authority. Governing Bodies are strongly recommended to seek advice from the HR service in these circumstances.

- 1.12 The school welcomes the participation of the relevant trade union representative at an early stage in this procedure to ensure the employee is supported and advised as appropriate. This will help to ensure employee wellbeing and a joint approach to resolving the identified performance issues within the required timescales.

## **Equalities and Equal Opportunities**

- 2.0 The governing body recognises its legal responsibilities to staff under the Equality Act 2010 to ensure equality and fairness regardless of race, sex, sexual orientation, religion or belief, gender re-assignment, pregnancy and maternity, marriage and civil partnership, disability or age. All decisions will be taken in accordance with relevant equalities legislation, the Employment Relations Act 1999, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 2.1 The governing body is aware of its responsibilities under the Freedom of Information Act 2000 to make available this policy to all staff at the school and its responsibilities to be compliant with the Data Protection Act 2018 and the General Data Protection Regulations 2018.

## **Aims of the Procedure**

- 3.0 The purpose of this procedure is to support and monitor the underperformance of teachers (including deputy head teachers and head teachers) and support staff, including apprentices (where directly employed by the school). The aim of the capability procedure is to provide a clear framework, in which capability issues and concerns of underperformance are managed by the school. The framework sets out how the school can improve performance by providing focussed support and monitoring within appraisal. Where there is insufficient improvement in performance, the procedure allows for warnings to be issued and ultimately consideration of dismissal based on the grounds of capability.

## **Transition from Appraisal to the Disciplinary (Capability) Performance Procedure for school staff**

- 4.0 The Disciplinary (Capability) Performance Procedure is not a stand alone procedure but should be considered following the application of the Nottinghamshire Appraisal Policy and Guidance for school based staff. For ease of reference, this procedure will be referred to as the *capability procedure* throughout this document.
- 4.1 There is no automatic transition to the school's capability procedure. However, where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee. The employee should be reminded to contact their trade union for support at this stage. There should be some evidence to demonstrate that the school has put in place reasonable arrangements to enable the employee to resolve the performance concerns within the appraisal process. This should be through

initial support and then, where required, through the provision of a six week focussed support plan agreed in discussion with the employee. Where concerns are such that the employee is not performing to the required standard, the appraiser should ensure that the head teacher or other identified senior leader is included in these discussions.

- 4.2 Where the teacher / member of the support staff demonstrates serious underperformance, or there is insufficient progress against the objectives and the employee's performance has not responded effectively to the period of focussed support within appraisal consideration should be given to the commencement of the capability procedure. The decision to consider transition from appraisal to capability should therefore not come as a surprise to the employee. The appraisee will be notified in writing that the appraisal process will be suspended and that their performance will be managed within the capability procedure.
- 4.3 The head teacher (or other senior leader) / Chair of Governors (as appropriate) will initiate and be responsible for the implementation of the capability procedure. Where the head teacher is the subject of the capability procedure, the governing body will engage an appropriately qualified, skilled experienced external adviser from the Education Improvement Service and seek advice on the process from the HR Service.
- 4.4 Disciplinary (Conduct) procedure will only be triggered by factors relating to misconduct or breach of professional standards. School should be careful not to conflate these procedures but, if appropriate to the circumstances, they can run concurrently.

## Context

Nottinghamshire County Council and the governing body of the school, each have an obligation to pupils and students, and to the profession as a whole, to be rigorous in its maintenance of a competent and skilled school work force. Governing bodies must, by law, have procedures for dealing with lack of capability for all members of school staff. This procedure is in line with current employment legislation, the outline capability procedure produced by the DfE and ACAS guidance, and aligns with the Nottinghamshire County Council's Appraisal Policy for Teachers adopted in 2012 and updated in September 2024.

Due to the complexities of this area of employment and education law, governing bodies and other relevant corporate bodies are strongly advised to adopt this policy without amendment. If an academy or other school outside the control of Nottinghamshire County Council adopts this procedure, references to the council as employer will need to be replaced by the name of the employing body/Trust. Similarly, references to the Education Improvement and HR Services will need to be amended unless there is a service level agreement in place with those services to cover this work. Should, exceptionally, the governing body of a school maintained by Nottinghamshire County Council seek to amend the recommended policy, it will need to consult / negotiate any changes collectively with all the secretaries of the recognised trade unions and confirm any amendments to the local authority. Governing bodies are strongly recommended to seek advice from the HR service in these circumstances

This procedure is recommended for adoption by all Nottinghamshire schools including, Community Schools, Voluntary Aided and Voluntary Controlled Schools, Academy Schools, Foundation and Trust Schools.

## Principles and commitments

It is important that the principles underpinning the procedure are clearly defined and understood by all staff:

1. The Capability Procedure will be applied fairly and consistently.
2. The employee will be provided with appropriate development and support. Their performance will be monitored through review periods as set out in this procedure.
3. Employees have the right to be accompanied by a trade union representative or colleague. All parties agree to work within the protocol agreed between the local authority, the head teacher, the governors and the trade unions on the undertaking of casework. The trade union representative should be identified to the headteacher / chair of governors in advance of any meetings and should not have any conflict of interest.
4. Employees will not be discriminated against because of their age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership status, pregnancy, maternity or trade union status.
5. All employees will be provided with a clear understanding of their role, job purpose/job description and the standards expected of them.
6. Head teachers will support and enable employees to reach the required standard of performance through:
  - a) Effective induction to any new role

- b) Access to professional development opportunities, including coaching and mentoring support where appropriate
  - c) Effective application of the school's appraisal policy/support and supervision arrangements within the context of the relevant professional standards
  - d) A commitment to identify and address performance concerns and transparency at the earliest reasonable opportunity
7. Head teachers should ensure that staff are made aware of this procedure and that a copy is made available.

### **Exceptional cases**

This procedure aims to improve the performance of the identified employee within the timescales set. It is recognised that delay may not be in the interests of all parties and in extreme cases, such as where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning will be reduced to four weeks in total.

### **Support to manage the process**

For teachers, appropriate arrangements from within school or via the Education Improvement Service (EIS) will secure the assistance of an appropriate advisor to attend the formal capability meeting and to act as monitoring officer throughout the capability procedure review periods. For support staff, including apprentices (where directly employed by the school), similar in-school arrangements may be put in place or other advisers may be engaged externally to support the monitoring, support and review process.

Governing bodies are reminded that for those schools who purchase an annual HR package, specialist support to defend any employment or court proceedings arising from the application of employment processes will be made available so long as advice from the County Council HR service has been sought and followed. A failure to seek and follow this advice at each stage of the process may lead to the legal support and insurance cover being nullified.

### **Advice, support and Training**

It is the responsibility of the head teacher to ensure that all relevant senior leaders understand their role and have access to appropriate support, advice and training in the application of these procedures. The head teacher should also ensure, in conjunction with the chair of Governors and the training co-ordinator, where appropriate, that in discharging their duties and responsibilities, governors have access to support, advice and training as appropriate.

### **Support staff**

For all staff not subject to the School Teachers' Pay and Conditions Document (STPCD), head teachers will be guided by this procedure, but references to the appraisal policy for teachers, to Teachers' / Headteachers' Standards and to the role of the Education Improvement Service will not apply. Otherwise, the stages of the capability procedure set out below, including order of events, timescales for action and review, notification of meetings and their outcomes including provisions in respect of warnings, hearings and dismissal will all apply to support staff, including apprentices



(where employed directly by the school). For these staff it would be expected that any performance concerns will have been raised in the first instance through routine support and supervision meetings with appropriate monitoring, support development and review measures put into place. Application of the capability procedure for support staff should only follow when support and feedback has not resulted in the required level of performance being achieved and maintained.

# **PROCEDURE**

## **Disciplinary (Capability) Procedure – Performance of School Staff**

### **1.0 The Procedure**

1.1 This procedure applies to all school employees, (teaching and support), about whose performance there are serious concerns and / or persistent failures to meet job expectations that the appraisal process and/or, in the case of support staff, support and supervision has been unable to address.

1.2 Where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee and recorded in line with the agreed Nottinghamshire Appraisal Policy and Guidance. Every effort should be made to resolve performance concerns in a supportive environment in line with the appraisal process. If the concerns are not resolved through a six week focussed support plan within appraisal, consideration should be given to the application of the capability procedure.

1.3 The procedure will be led and managed by the head teacher (or other delegated senior leader) or chair of governors (in the case of head teacher performance issues). Where the head teacher is the subject of the capability process, the procedure assumes that the governing body will engage an appropriately qualified and experienced external adviser to undertake the monitoring and manage the process, or assist the chair of governors to do so, on behalf of the governing body. The procedure also assumes that the governing body will consult with and engage the services of the County Council HR service to provide practical advice and support to the school in the application of these procedures. Head teacher review meetings may be conducted by the chair of governors or an appropriately constituted panel.

1.4 If, at the end of the six week period of focussed support and feedback, appraisal concerns have not been resolved, the head teacher or external adviser/chair of governors should meet briefly with the employee. The purpose of this meeting is to summarise the concerns and inform the employee that a capability meeting will be arranged.

### **STAGE 1**

#### **2.0 Capability Meeting**

2.1 The written invitation to the formal capability meeting represents formal entry into the capability procedure and the suspension of the appraisal/support and supervision process. The meeting will be conducted by the head teacher or external adviser/chair of governors where the performance of the head teacher is the subject of concern. (Appendix 5.1 – Invitation to Capability Meeting)

2.2 The purpose of the formal capability meeting is to allow the employee, accompanied if they wish by a trade union representative or colleague, to respond to the on-going concerns about their performance and to make any relevant representations. The meeting may provide a different context to the information/evidence already collected by the school.

2.3 The employee will be given at least 5 working days' notice of the formal capability meeting. The procedure for the meeting is as set out in Appendix 3a. The invitation letter to the employee will include sufficient information about the performance concerns and their possible consequences to enable the teacher to prepare to answer the case at this formal meeting. The letter will therefore include copies of the documentation the head teacher (or other delegated senior leader) or external adviser/chair of governors intends to consider at the meeting. The meeting will also involve a representative of the EIS and HR adviser. Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (ie within 5 working days of the original proposed date)\* *Section 10 of the Employment Rights Act 1999.*

2.4 The employee should be informed of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish. The school should make arrangements for notes to be taken at the meeting.

2.5 The capability meeting will:

- Establish the facts by examining the concerns about performance and clarify the standards required for the job;
- Review concerns and the evidence arising out of the focussed support plan and feedback provided to this point, including evidence from the appraiser and/or support person (where appropriate);

2.6 Following a full consideration of the evidence, there should be an adjournment for the person conducting the meeting to consider and then determine the appropriate action to be taken.

### **3.0 Capability meeting – Possible outcomes:**

3.1 Where it is determined by the person conducting the meeting that there is insufficient evidence for continuing the capability procedure, this will be confirmed in writing to the employee and the capability procedures will end and the appraisal process will re-start.

3.2 Where it is determined by the person conducting the meeting that performance is not meeting the required standard, the first six week monitoring and review period will start straightaway within the procedure. The person conducting the meeting will:

- a. Confirm that the school appraisal process (for teachers) or the appraisal/support and supervision arrangements (for support staff) is suspended and that the capability procedure will continue;
- b. Identify the professional / performance shortcomings. The nature of the performance concerns should be specific, clear and capable of being assessed for improvement. For teachers, it will be necessary to identify which of the relevant national Teacher Standards identified through appraisal are not being met, according to their career stage, role, post responsibilities and job description. For support staff, it will be necessary to identify the performance concerns in accordance with the employee's job description, role, responsibilities and job evaluation profile;

- c. Set reasonable targets and performance indicators, ensuring the areas of concern are specific, clear, and capable of being assessed for improvement;
- d. Provide clear information and guidance on the standard of performance required of the employee to enable their removal from the capability procedure. This should include the setting of small step targets focussed on the specific areas of concern/weakness which need to be addressed, the identification of appropriate success criteria and a determination of the evidence that will be used to assess whether or not the required improvement has been made;
- e. Outline the monitoring and review activity to be undertaken during the review period, with an indication of at what point and by whom (normally on a two week basis). Note that if the monitoring or support process is undertaken by the head teacher, any review meetings will need to be conducted by a governors' panel;
- f. Explain and seek to agree the support that will be made available to help the employee improve their performance, deciding when, how and by whom the support will be delivered;
- g. Set out the first six week timetable for monitoring progress and providing support and feedback within the capability procedure which will depend on the circumstances of the individual case. The first review period will be for a maximum period of six working weeks duration. However, the period of review/assessment may be shorter if the circumstances justify it. See paragraph 3.3. The timetable for improvement will take into account the teacher's/employee's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs or disabilities protected by the Equalities Act 2010.
- h. Confirm the date and time of the review meeting with the employee, their trade union representative or colleague, HR adviser and monitoring officer
- i. Issue a **written warning** to the employee and explain that failure to improve performance within the review period could lead to further warnings. The warning will remain current for a period of 12 months after which time it will be reviewed. A higher degree of warning may be given at this stage, thereby reducing the overall timescale, if the circumstances justify it (see paragraph 3.3). In extreme cases, where the education or health and/or safety of pupils is jeopardised, the warning issued at this stage could be a final written warning. In applying this procedure, no employee will be dismissed on the grounds of capability without having first received a warning.

3.3 The period set for improvement should always be reasonable and the circumstances that may justify a shorter review period or higher degree warning may be:

- Where the seriousness of the level of under-performance means that pupils' education and/or safety and/or management of the school is jeopardised;
- Where it is evident that an acceptable level of improvement is beyond the ability of the employee being assessed;
- Where there is a lack of co-operation with the process or a serious further deterioration in performance.

3.4. The outcome of this meeting, including the level of warning and right of appeal will be confirmed in writing to the employee within 3 working days and a copy sent to their trade union representative or colleague.

3.5. Notes taken at the meeting will be provided to the employee and, if applicable, to their trade union representative or colleague.

#### **4.0 Capability meeting – Appeal against warning**

4.1 The employee has the right of appeal and must do so, in writing, briefly setting out the grounds of the appeal within 10 working days of receiving the written outcome of the performance meeting. The employee will indicate which of the original documents considered at the performance meeting they want re-submitted as evidence at the appeal. The appeal is a re-hearing and will be considered by an Appeals Panel of (normally) 3 governors who have not been previously involved with consideration of the case.

4.2 The appeal will be conducted in line with the procedure set out in Appendix 3b and guidance Appendix 4. The employee should be notified of their right to be accompanied by their trade union representative or colleague.

4.3 The outcome of the appeal should be confirmed in writing to the employee within 3 working days of the decision. Notes taken at the appeal will be provided to the employee and, if applicable their trade union representative or colleague. Where an employee appeals against a warning issued at the Capability Meeting, this will not delay the commencement of the first capability review period.

### **STAGE 2**

#### **5.0 First formal monitoring and review period**

5.1 The first formal monitoring and review period should start immediately and will be for a maximum of six working weeks. The purpose of the review period is to provide every reasonable opportunity for monitoring, support and improvement whilst at the same time recognising that the achievement of the required standard of performance remains the overriding goal.

5.2 Monitoring, evaluation, feedback, guidance and support will take place during this review period. The monitoring activities should be staged appropriately over the review period so that the employee is able to demonstrate progress within that timeframe and take action on feedback given so that the required standards can be met. Where monitoring visits take place, they will consist of announced and unannounced visits to the employee. Similarly, the cycle of support for the employee should be set out, staged and coordinated by the school to provide the employee every opportunity to meet the required standards.

#### **6.0 First review meeting**

6.1 The first review meeting will be held at the end of the review period in line with the agreed timescale. At least 5 working days prior to the review meeting, the employee will be reminded in writing of the date, time, place and purpose of the meeting, as agreed at the Capability Meeting. The letter to the employee will invite them 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. In any case the letter will include copies of

the documentation to be considered by the person/panel conducting the meeting. The meeting will be conducted in line with the order of events detailed in Appendix 3b and Guidance Appendix 4. The school should make arrangements for notes to be taken at the meeting.

6.2 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

6.3 This meeting should be convened and conducted by the head teacher (or delegated senior leader) or external adviser/chair of governors where the performance issues relate to the head teacher. The meeting will also involve the monitoring officer and the HR adviser.

6.4 Where the head teacher has undertaken the monitoring role, the head teacher should make arrangements for the outcome of the first review period to be considered as a capability hearing conducted by an appropriately constituted panel of the governing body.

6.5 In the case of a meeting to review the head teacher's performance the meeting should be convened by the external adviser (acting as monitoring officer)/chair of governors and will involve the HR adviser, any witnesses and will be referred to an appropriately constituted governors' panel.

6.6 The purpose of this review meeting is to consider the evidence from the monitoring officer obtained throughout the review period, to assess the employee's performance and focus on the extent to which improvements have or have not been made in relation to the targets for improvement and success criteria within the timescale of the review period. The meeting will also consider the evidence relating to the degree of support made available by the school and accessed by the employee and any evidence presented by the employee. Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (i.e. within 5 working days of the original proposed date)\* *Section 10 of the Employment Rights Act 1999.*

## **7.0 First review meeting – Possible outcomes:**

The outcome of this meeting will be one of the following:

### ***7.1 Performance standards fully met and transition back to appraisal.***

If the person/panel conducting the meeting is satisfied that the employee has fully met all of the required performance standards and is now working to the required standard, the performance procedure will cease and, for teachers, the appraisal process will re-start. The decision will be confirmed in writing to the employee. Where, within the life of a warning, performance deteriorates resulting in a decision to suspend appraisal/support and supervision and re-apply the capability procedure the employee will be re-issued with a warning consistent with the relevant stage of the procedure. The written warning will be extended to a period of one year. The capability procedure will normally re-commence at the start of the first review period.

### ***7.2 Performance standards not met.***

If the employee has made insufficient improvement and not fully met the required standards of performance during the first monitoring and review period, the person/panel conducting the meeting will confirm with the employee the areas of their performance where the required standards of performance have not been met and will issue the employee with a **final written warning**. The warning will remain current for a period of 12 months after which time it will be reviewed.

7.3 Where a final written warning is issued, the decision will be confirmed in writing to the employee within 3 working days and a copy sent to their trade union representative or colleague. The employee will be informed in writing that a further failure to achieve the required standard of performance (within the set timescale), may result in dismissal. The employee will be informed of the remaining required standards for improvement, the monitoring arrangements for the second and final monitoring and review period and the arrangements for the provision of support.

7.4 The date of the next review meeting/decision meeting will be agreed with the employee and their representative or colleague, the HR adviser and any witnesses and confirmed in the outcome letter. The employee will also be given details of the process and time limits for appealing against the final written warning. To enable an appeal to be heard as soon as possible, the potential appeal date will be agreed at this meeting and stated in the outcome letter providing at least 10 working days notice, unless an earlier date is mutually agreed.

7.5 Notes taken at the meeting will be provided to the employee and, if applicable, their union representative or colleague.

## **8.0 First review period – Appeal against warning**

8.1 The employee has the right to appeal against this decision and must do so in writing, briefly setting out the grounds of the appeal, within 10 working days of the written outcome of the first review meeting. The employee will indicate which of the original documents considered at the first review meeting they want re-submitted as evidence at the appeal. The appeal is a re-hearing will be considered by a panel of (normally) 3 governors who have not been involved in the monitoring or support arrangements during the first review period.

8.2 The appeal will be conducted in line with the procedure set out in Appendix 3b and guidance Appendix 4. The employee should be notified of their right to be accompanied by their trade union representative or colleague.

8.3 The outcome of the appeal should be confirmed in writing to the employee within 3 working days of the decision. Notes taken at the appeal hearing will be provided to the employee and, if applicable, their trade union representative or colleague. Where an employee appeals against a warning issued at the first review meeting, this will not delay the commencement of the second review period.

## **STAGE 3**

### **9.0 Second formal monitoring and review period**

9.1 The second formal monitoring and review period should start immediately and will be for a maximum of six working weeks. The purpose of the review period is to provide every reasonable opportunity for monitoring, support and improvement whilst at the same time recognising that the achievement of the required standard of performance remains the overriding goal.

9.2 Monitoring, evaluation, feedback, guidance and support will take place during this period. The monitoring activities should be staged appropriately over the review period (to decide if weekly but not more than two weekly) so that the employee is able to demonstrate progress within that time frame and take action on feedback given so that the required standards can be met. Where monitoring visits take place they will consist of announced and unannounced visits to the employee. Similarly, the cycle of support for the employee should be staged and coordinated by the school, over the review period, to provide the employee every opportunity for feedback to meet the required standards. The timetable for improvement will take into account the teacher's/employee's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs or disabilities protected by the Equalities Act 2010.

## **10.0 Second formal monitoring and review meeting - decision meeting**

10.1 The decision meeting will be held at the end of the second review period in line with the agreed timescale. At least 5 working days prior to the review meeting, the employee will be reminded in writing of the date, time, place and purpose of the meeting, as agreed at the conclusion of the first review meeting. The meeting will be conducted in line with the order of events detailed in Appendix 3b and Guidance Appendix 4. The school should make arrangements for notes to be taken at the meeting.

10.2 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own evidence / information in advance of the meeting and to call witnesses if they wish.

10.3 This meeting should be convened and conducted by the head teacher (or delegated senior leader) or external adviser/chair of governors. The meeting will also involve the monitoring officer and the HR adviser

10.4 Where the head teacher has undertaken the monitoring role, the head teacher should make arrangements for the outcome of the second review period to be considered as a capability hearing conducted by an appropriately constituted panel of the governing body.

10.5 In the case of a meeting to review the head teachers' performance the meeting should be convened by the external adviser (acting as monitoring officer)/chair of governors and will involve the HR adviser, any witnesses and will be referred to an appropriately constituted governors' panel. (See paragraph 12)

10.6 The purpose of this review meeting is to consider the evidence from the monitoring officer obtained throughout the review period, to assess the employee's performance and focus on the extent to which improvements have or have not been made on the targets for improvement and success criteria within the timescale of the review period. The meeting will also consider the evidence relating to the impact of the support made available and accessed by the employee and any evidence presented by the employee. Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (i.e. within 5 working days of the original proposed date)\* *Section 10 of the Employment Rights Act 1999.*

## **11.0 Second review meeting – Possible outcomes:**

The outcome of this meeting will be one of the following:



### *11.1 Performance standards met and transition back to appraisal.*

If the person/panel conducting the meeting is satisfied that the employee is now working to the required standard, the capability procedure will cease and, for teachers, the appraisal process will re-start. The decision will be confirmed in writing to the employee. Where, within the life of a warning, the performance deteriorates resulting in a decision to suspend appraisal/support and supervision and re-apply the capability procedure, the employee will be re-issued with a final warning consistent with the relevant stage of the procedure. The final written warning will be extended to a period of one year. The capability procedure will normally re-commence at the start of the second review period.

### *11.2 Performance standards not met.*

If the employee has made insufficient improvement and not fully met the required standards of performance during the second monitoring and review period and is not working to the required standard, the person conducting the meeting will confirm with the employee the areas of their performance where the required standards have not been met. The employee will be suspended on full pay pending a hearing conducted by a governors' panel to consider a recommendation that the employee should be dismissed from their post at the school. The employee should be informed that there is no right of appeal against the decision to suspend. Suspension is not in itself a disciplinary sanction and does not presume the outcome of the governors' hearing.

11.3 At the end of the meeting the date for the governors' hearing will be agreed with the employee and their trade union representative or colleague, monitoring officer, HR adviser and any witnesses required. This decision will be confirmed in writing to the employee in the outcome letter within 3 working days of the decision, along with the date for the hearing and the right to be accompanied.

11.4 Notes taken at the meeting will be provided to the employee and, if applicable, their union representative or colleague

## **12.0 Governors' hearing**

12.1 The employee and their representative should be notified of the governors' panel hearing date at the decision meeting.

12.2 This meeting should be convened by the presenting officer. This will either be head teacher or other delegated senior leader ( for teachers and support staff) or the external adviser acting as monitoring officer engaged to manage the process at the request of the chair of governors on behalf of the governing body where the head teacher is subject to the capability procedure.

12.3 The school/academy should consult their articles of government and convene the hearing to consider dismissal in line with the options made available within the School Staffing Regulations. Where a governors' panel is appointed it will normally comprise of 3 governors.

12.4 The purpose of the governors' hearing is to consider the recommendation for dismissal. The hearing will consider the evidence from the monitoring officer, assess the employee's performance and focus on the extent to which improvements have or have not been made in relation to the targets for improvement and success criteria

within the timescale. The meeting will also consider the evidence related to the support made available by the school and accessed by the employee.

12.5 The presenting officer will formally invite the employee and their trade union representative or colleague to the hearing. The letter copied to their representative should confirm the purpose, date, time and place of the hearing 10 working days in advance of the hearing date, unless an earlier date is mutually agreed. The letter to the employee will include copies of the documentation to be considered by the person / panel conducting the meeting.

12.6 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

12.7 The school should make arrangements for notes to be taken at the meeting.

12.8 The hearing and any appeal should be held in line with the principles and procedures detailed in Appendix 3b and Guidance Appendix 4.

12.9 The decision of the panel should be confirmed to the employee within 3 working days of the meeting. If the decision is taken to dismiss the employee, the panel will issue notice of termination of employment in line with the contract of employment. The dismissal letter should confirm details about the process and time limits for submitting an appeal against the dismissal decision. Any appeal against dismissal will be arranged as soon as possible during the employee's notice period.

12.10 Notes taken at the meeting will be provided to the employee and, if applicable their trade union representative or colleague.

12.11 Once the governing body (of a maintained school) has taken the decision that the teacher should no longer work at the school, it will notify the local authority in writing of its decision and reasons for it.

### **13.0 Second review period – Appeal against dismissal**

13.1 The employee has the right to appeal against a decision to dismiss and must do so, in writing to the head teacher/chair of governors, briefly setting out the grounds of the appeal within 10 working days of the written outcome of the dismissal hearing. The employee will indicate which of the original documents considered at the decision meeting they want to be re-submitted as evidence at the appeal. The appeal will be considered by an appeals panel of (normally) 3 governors. The employee appeal should be held in line with the principles and procedure as detailed in Appendix 3b and Guidance Appendix 4.

13.2 The presenting officer will formally invite the employee and their trade union representative or colleague to the appeal hearing. The letter copied to their representative should confirm the purpose, date, time and place of the appeal hearing 10 working days in advance of the hearing unless an earlier date is mutually agreed. The appeal is a re-hearing of the case and the appeal invite letter to the employee should include as appendices the documentation to be considered at the governors' dismissal appeal hearing.

13.3 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

13.4 The school should make arrangements for notes to be taken at the meeting.

#### **14.0 Governors' Appeal Hearing – Possible outcomes**

14.1 The outcome of the appeal hearing will be confirmed in writing to the employee and their representative within 3 working days of the appeal hearing. The appeal panel will confirm or reject the decision which is subject to appeal. The decision will be final and there is no further right of appeal. If the determination of the appeal panel is to confirm the decision to dismiss the employee, the notice of termination of contract will continue. In the event of a successful appeal after the dismissal, a decision on any resultant actions within the capability procedure will need to be made, arrangements should be made for the employee to be re-integrated into school, and for the notice of termination of employment will be rescinded.

14.2 Notes taken at the meeting will be provided to the employee and, if applicable their trade union representative or colleague.

15.0 The procedure for managing the induction and any performance concerns relating to early career teachers (ECT's) is set out in the Nottinghamshire School Staff Induction policy. Additional information is available in the Guidance and Toolkit to this procedure. Accredited ITT providers should consider the full range of applicants' knowledge, skills, academic background and prior experience to judge whether they have the capability to undertake an ITT course and meet the Teachers' Standards by the end of their training.

[https://assets.publishing.service.gov.uk/media/66d042a9011f08ebe0502c49/ITT\\_statutory\\_guidance\\_2024\\_to\\_2025\\_September\\_2024\\_update.pdf](https://assets.publishing.service.gov.uk/media/66d042a9011f08ebe0502c49/ITT_statutory_guidance_2024_to_2025_September_2024_update.pdf)

16.0 References - The School Staffing (England) Regulations 2012 – set out “that if a teacher has been subject to formal capability procedures in the previous two years this must be disclosed to new potential school employers when requested”

#### **17 Grievances**

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, including as part of the capability process, it may be appropriate to deal with both issues concurrently.

#### **18 Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy. (e.g. 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 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, or for a decision to be made on the outcome of the review period based on the evidence available during the current stage of the procedure.

JCNP Staffing Regulations Working Party	May 2013
JCNP Staffing Regulations Working Party	3 October 2024
Consultation period	1-16 October 2024
Lead HR Business Partner	
Lead HR Senior Business Partner	Andy Wilson
Date policy updated	13 October 2021 4 November 2024 (format update only)
Review Date	September 2025

## References

School Teacher's Pay and Conditions Document 2024 [STPCD](#)

- [Teachers' Standards 2012](#)
- [Teachers' Standards \(Early Years\) September 2013](#)
- [Headteachers' standards 2020](#)
- [Standards for teachers' professional development](#) and the [implementation guidance 2016](#)
- <https://www.gov.uk/government/publications/data-burdens-on-schools>
- <https://www.gov.uk/government/publications/induction-for-early-career-teachers-england>
- [School's Induction Policy](#)
- [Teacher appraisal \(valid from September 2024\)](#)
- [Teacher capability: guidance for schools when dealing with serious under-performance \(valid from September 2024\)](#)
- [Managing Teachers Pay](#)

4.11.2024 (AW)