Model Capability Procedure for Schools

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0.1	May 2017	Additional wording inserted at 6.1 to emphasise need for support under the appraisal process before moving to formal capability proceedings	

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Model Capability Procedure for schools

1. Purpose

1.1. The purpose of this procedure is to manage underperformance arising from lack of skill, aptitude or ability. It aims to encourage employees to achieve and maintain acceptable standards of performance and is designed to ensure fairness and consistency in the management of employee performance.

1.2. All maintained schools are required to have a procedure which sets out how underperformance will be managed. This model procedure has been developed for use in West Berkshire schools, and complies with the principles set out in the

model teacher appraisal and capability policy published by the Department for Education.

2. Applicability

2.1. This procedure applies to all employees of the school, including the head teacher, with the following specific exceptions;

- Newly Qualified Teachers during the statutory Induction Period;
- Non-teaching staff under a probationary period, for whom alternative procedures apply.

2.2. This procedure should be used where performance falls below the required standards for the job (including, in the case of teachers, the professional standards for teachers), and the underperformance is deemed to be due to lack of skill, aptitude or ability.

2.3. It should not be used to deal with underperformance where the lack of capability is due to ill health or disability. Where, after investigation, this is found to be the case, the use of this procedure should be ended. Schools should refer to the Management of Sickness Absence procedure and/or the Handling Capability Issues due to Ill Health advice for schools, as appropriate.

2.4. It should not be used to deal with misconduct, where an employee's failure to perform is due to wilful refusal, neglect, unwillingness, carelessness, laziness or lack of commitment. The disciplinary procedure should be used in these cases.

3. Roles and Responsibilities

3.1. Head teachers/line managers and the governing body are responsible for implementing this procedure when required.

3.2. Head teachers/line managers are responsible for ensuring staff receive appropriate training and support and receive adequate feedback on performance.

3.3. Where schools 'buy-in' to the WBC Human Resources service, HR staff will provide head teachers/line managers with specialist advice on implementing the capability procedure.

3.4. Employees are responsible for performing the duties of the post to the best of their abilities and in accordance with any specified regulations or performance standards.

Employees are also responsible for complying with the requirements of this procedure.

4. Principles

4.1. Employees subject to this procedure have the right to be accompanied by a work colleague or trade union representative during all stages of the formal process. The representative should be identified to management in advance and should not

be someone whose presence would prejudice the meeting or who might have a conflict of interest. If the representative is a work colleague they will be entitled to take reasonable time off to prepare for and attend the hearing and confer with the employee following the hearing.

4.2. The local authority has a right[1] to send a representative to attend any hearing convened to consider dismissal or an appeal against dismissal, for the purpose of providing advice to the panel. Such advice will be given to the panel only (in the same way that the employee and the management representative may receive their own advice) and must be considered by the panel before making a decision.

4.3. No formal action will be taken against a trade union representative until the circumstances of the case have been notified to a regional officer of the trade union concerned.

4.4. If the employee or his/her representative requires support (e.g. because of issues to do with language or disability) to take part in this procedure, these matters will be reasonably addressed so that any formal proceedings can take place fairly.

4.5. Information relating to formal proceedings will be kept confidential as appropriate.

4.6. Notes will be taken of formal meetings and a copy will be sent to the employee, normally within five school days. If the employee agrees, and provides contact details, the notes will also be sent to the trade union representative.

4.7. The time-scales within this procedure may be amended by mutual consent. Whilst accommodation should be made to ensure proper representation at formal meetings, all efforts should be made to ensure that there are no unreasonable delays in arranging these meetings.

4.8. Where there is alleged incapability on the part of a head teacher, in a community or voluntary controlled school, the chair of governors will inform the Corporate Director for Communities before any action is taken. In the case of the head teacher, any investigation and further action will be jointly led by the chair of the governing body and the Head of Education Services (or another person external to the school agreed by the chair of governors and the Head of Education Services).

4.9. In foundation and voluntary aided schools the local authority does not have any statutory entitlement to advise the governing body in relation to the appointment and dismissal of teachers (including head teachers and deputy head teachers). However, it may do so where, and to the extent that, an agreement between the governing body and the local authority provides for it to do so.

4.10. In Church schools, the Diocesan director should also be informed of any proposed action against the head teacher.

[1] For foundation and voluntary aided schools this right exists only where the school has a written agreement with the local authority (Reg 26 of the School Staffing Regulations).

5. Authority to act under this procedure

Capability procedure in respect of	Formal capability/review meeting	Appeal against formal warning	Dismissal	Dismissal appeal
Head teacher	Chair of Governing Body and Head of Education Services	A Governor not previously involved in the case (*larger schools may have a panel of up to 3 Governors*)	Panel of 3 Governors not previously involved in the case	Panel of 3 Governors not previously involved in the case.
Support employee Teacher	Senior manager or head teacher	Head teacher (or, where head teacher involved at Stage 1, a Governor)	Head teacher (if not previously involved in the case and has delegated powers to take a dismissal decision) or panel of 3 Governors not previously involved in the case	Panel of 3 Governors not previously involved in the case

6. Informal support under the appraisal process

6.1. All employees (with certain specific exceptions set out in the appraisal procedure) should have their performance managed routinely under the school's appraisal policy and procedure. Where the appraiser/line manager has concerns about the performance of an employee they should initially manage these informally within the appraisal process and/or normal day-to-day management processes. Note that the school appraisal procedure requires that concerns are brought to the attention of the individual and that structured informal support is provided before moving to the formal capability procedure.

6.2. If informal support within the appraisal process does not produce the required improvements to performance within a reasonable timescale, the appraiser/line manager will decide whether to recommend that the matter should be dealt with under the capability procedure.

6.3. The appraiser/line manager will seek advice from the head teacher who will decide whether to move to the capability procedure. In the case of the head teacher, the chair of the appraisal panel will seek the advice of the chair of governors, who will consult with the Head of Education Services or his representative before deciding to move onto the capability procedure.

7. Notification of move to capability procedure

7.1. The employee will be notified in writing of the decision to cease use of the appraisal process and that performance will be managed under the capability procedure. The notification will include an invitation to attend a formal capability

meeting. At least ten school days' notice will be given of the date of the meeting, unless a shorter period is mutually agreed.

7.2. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting.

8. Formal capability meeting

8.1. The head teacher (or a senior manager nominated by the head teacher, or the chair of governors in the case of the head teacher) will chair the meeting. The intention of the meeting is to establish the facts.

8.2. The appraiser will explain the nature of the performance concerns, and the steps that have been taken to address these informally. The employee will be allowed 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.

8.3. The head teacher (or senior manager/chair of governors) will consider the evidence presented and, after a brief adjournment to consider his/her decision, may decide either;

a) That there are insufficient grounds to pursue formal capability proceedings and that the matter should either be dropped or dealt with informally. In these circumstances the meeting will end and use of the formal procedure will cease; or

b) To adjourn the meeting to investigate further or to allow time for consideration of the evidence before reaching a decision. Any adjournment should be for a period of normally no more than ten school days. The meeting will be reconvened to consider any further information and the head teacher (or senior manager/chair of governors) will make a decision under a) or c) of this paragraph; or

c) To issue a first written warning.

8.4. In <u>very</u> exceptional circumstances the decision may be to issue a final written warning and invite the employee to a decision meeting. Advice must be sought from HR if such action is contemplated.

9. Issue of written warning

9.1. Where a written warning will be issued, the meeting will continue and the head teacher (or senior manager/chair of governors) will:

a) Identify the area(s) and nature of the underperformance (for teachers, this may include which of the standards expected of teachers are not being met);

b) Give clear guidance on the improved standard of performance needed to ensure that the employee 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);

c) Explain the support that will be available to help the employee improve his/her performance, including who will be involved in providing the support. These might include;

- Changes to working practices within the terms of the employee's job description;
- Increased supervisory support or mentoring for a specified period of time
- Feedback from classroom or other observation
- Work shadowing a competent employee which could include visits to other schools/workplaces
- Modified workload or tasks for a specified period of time
- Further training in the area(s) of deficiency

d) 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 will not normally be for less than six weeks or more than ten weeks in straightforward cases. The period should be reasonable and proportionate, and should provide sufficient opportunity for an improvement to take place; and

e) Warn the employee formally that failure to improve within the monitoring and review period could lead to dismissal.

9.2. The issue of a written warning will be confirmed in writing. The notification will summarise the content of the formal capability meeting and include details of;

a) The areas and nature of the underperformance identified; and

b) The standard of performance to be achieved during the monitoring and review period and any success criteria; and

c) How progress towards achieving these standards will be monitored and assessed; and

d) The support that will be made available; and

e) The timescale for improvement; and

f) The procedure and time limits for appealing against the warning.

10. Monitoring and review period

10.1. The period of formal monitoring, evaluation, guidance and support should start as soon as reasonably possible after the formal capability meeting.

10.2. During this period the head teacher (or senior manager/chair of governors), will ensure that the agreed support is provided and will monitor performance against the target improvements to be made. The format of the support and monitoring will depend on the job role and the nature and scale of the underperformance identified.

10.3. A formal review meeting will be convened at the end of the period of support to consider the outcome. The employee will be notified in writing at least ten school days before of the date and time of the meeting unless a shorter period is mutually agreed (this date may be agreed at the formal capability meeting).

11. Formal review meeting

11.1. The head teacher (or senior manager/chair of governors) will chair the meeting.

11.2. The head teacher (or senior manager/chair of governors) will consider the evidence gathered during the monitoring and review period, and any evidence presented and other representations from the employee, before reaching a decision. The head teacher (or senior manager/chair of governors) may decide that;

a) The employee has made sufficient improvement. In this case the capability procedure will cease and the appraisal process will re-start;

b) Some progress has been made and there is confidence that more is likely. In this case the monitoring and review *period* may be extended for a period of up to six school weeks;

c) No, or insufficient improvement has been made during the monitoring and review period. In this case the employee will be issued with a final written warning. The employee will be invited to a decision meeting.

11.3. Where a final written warning is issued, the employee 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 final monitoring and review period, including any support which will continue, and the procedure and time limits for appealing against the final warning.

11.4. At least ten school days' notice will be given of the date of the decision meeting (unless a shorter period is mutually agreed), which will be at least four weeks after the formal review meeting at which the final written warning was issued.

12. Decision meeting

12.1. The head teacher will chair the meeting if he/she has delegated responsibility to make dismissal decisions, and he/she has not chaired the formal capability meeting(s) or review meeting(s). In all other cases (including where the dismissal

of the head teacher is under consideration), the meeting will be held by a panel of three governors.

12.2. The management case will be presented by the manager conducting the earlier stages of the process, or the head teacher or chair of governors, as appropriate.

12.3. The head teacher/governor panel will consider the evidence gathered during the monitoring and review period, and any evidence presented and other representations from the employee, before reaching a decision. They may decide that;

a) An acceptable standard of performance has been achieved during the final monitoring and review period. In this case, the capability procedure will end and the appraisal process will re-start.

b) That performance remains unsatisfactory. In this case, a decision, or recommendation to the governing body, will be made that the employee should be dismissed or required to cease working at the school[2]. Before the decision to dismiss is made, the school will consult the local authority (and the Diocese in the case of Church schools.

12.4. The employee will be informed as soon as possible of the reasons for the decision to dismiss, or to recommend dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

12.5. Once the decision to dismiss has been taken, the governing body will issue notice of dismissal (for foundation or voluntary aided schools) or notify the local authority of its decision (for community and voluntary controlled schools). The local authority must issue notice of dismissal within 14 days of notification from the governing body of the decision.

12.6. The period of notice will be the statutory minimum or contractual notice (for teachers, this will be notice in accordance with the Burgundy Book), whichever is the longer. .

13. Appeals

13.1. An employee may appeal against a decision to dismiss, or to issue a formal warning under this procedure. The appeal should be made in writing, addressed the head teacher or, if the head teacher has issued the warning, or the employee is the head teacher, or the appeal is against dismissal, to the clerk to the governing body, within five days of the written notification of the decision, setting out the grounds for appeal.

[2] For VC and Community Schools, the GB must recommend that the LA dismiss the employee. For VA and Foundation Schools, the GB has the power to dismiss.

13.2. An appeal meeting will be convened as soon as possible and the employee will be given at least ten school days' notice of the time and date, unless a shorter period is mutually agreed.

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

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

14. Dealing with grievances

14.1. Where a member of staff raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance.

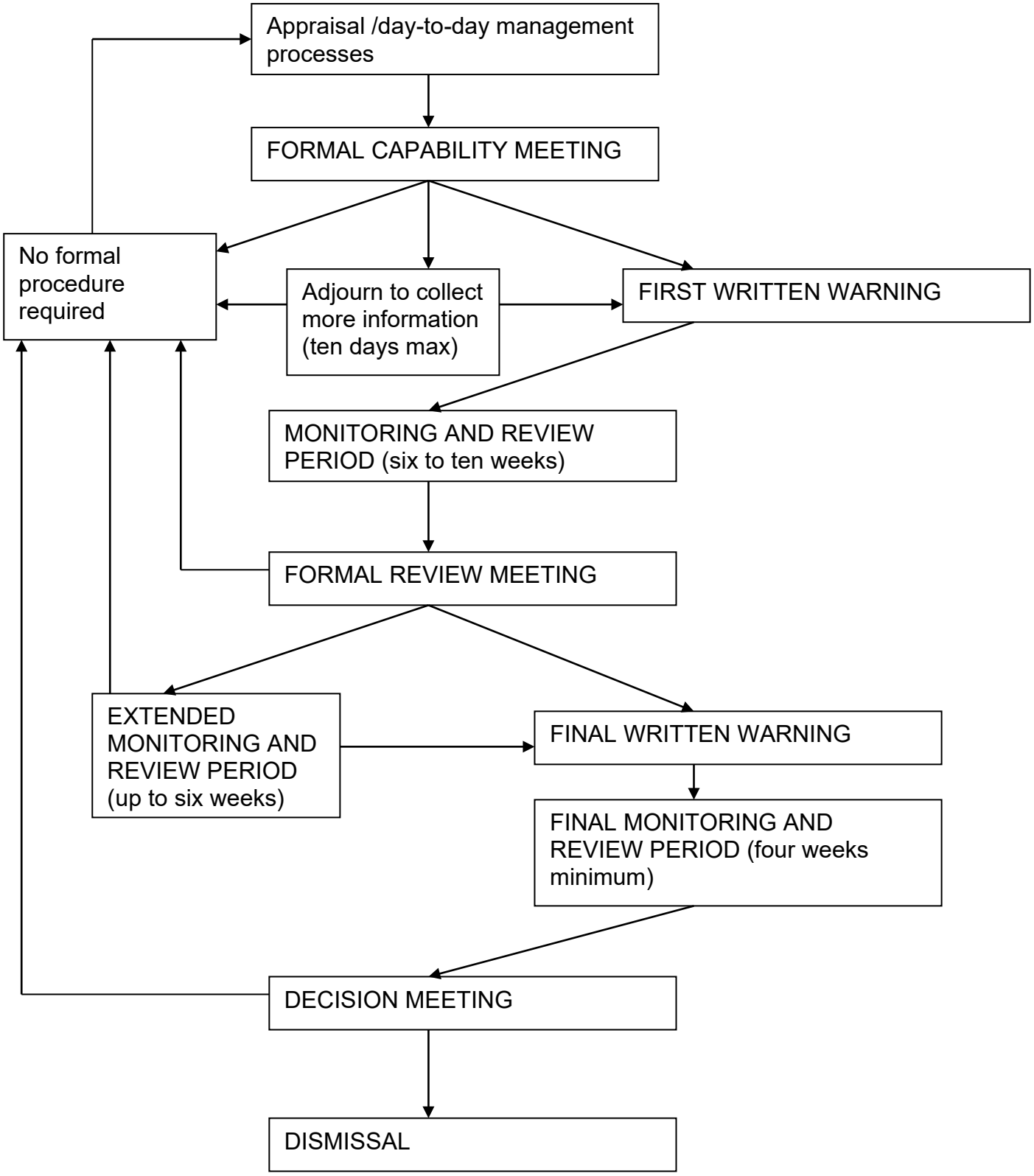
14.2. Where the grievance is related to the capability case, it will be appropriate to deal with it under the terms of the capability procedure, either during formal meetings or as part of an appeal.

15. Sickness absence

15.1. Short term sickness absences will not normally interfere with monitoring or other formal procedures.

15.2. If long term sickness absence appears to be triggered by the start of monitoring or a formal capability procedure, this will be dealt with in accordance with the school's absence policy. The employee will be referred to Occupational Health for an assessment of the employee's fitness for work and the appropriateness or otherwise of continuing with monitoring or formal procedures.

Appendix 1 - Flowchart



Appendix 2 – example monitoring and support plan for teachers

Refer to Professional Standards set out in the School Teachers Pay and Conditions

Area of Concern	Professional Standard	Support to be provided	Outcome to be achieved	Date to be achieved	Comments
Lesson Planning	**4 Plan and Teach wellstructured lessons**	1. Teacher to be given a step by step planning checklist. 2. Head to model use of planning checklist with teacher during his/her PPA time. 3. Head to continue to support Teacher during his/her PPA time until he/she is confident enough to produce planning of a 4. satisfactory standard. Teacher to ask for help as 5. and when needed. Key stage planning workshops with Head and colleague to continue on a fortnightly 6. basis. All teaching staff to share planning folders with each other to cascade best practise.	***Weekly planning:*** • to be completed for all subjects and annotated • to show clear direction and progression throughout the week • to include literacy and numeracy targets for all ability groups and provision for targeted pupils • to include learning intentions (LI) in child speak, that are well planned and reflect the learning needed to progress and the learning objective from the national curriculum unit of work being covered. • should show differentiation that is well planned, supports the LI and reflects curricular targets • Should cover a range of subject matter. ***Weekly timetable:*** • to be produced and adhered to ensure 100% coverage of the national curriculum ***Medium term planning:*** • for core subjects (and foundation subjects where appropriate) should be completed at least by the beginning of each term		

Quality of	**1 Set high expectations**	1. Leadership team to use	All lessons observed are at least		

teaching and learning and lack of pupil progress	**which inspire, motivate and challenge pupils** **4 Plan and teach wellstructured lessons** **5 Adapt teaching to respond to the strengths and needs of all pupils** **6 Make accurate and productive use of assessment**	Lesson Study model to work alongside Teacher to provide collaborative classroom professional learning. 2. Visits to other schools to be arranged 3. Lesson observation and feedback from Deputy Head 4. Deputy Head to assist with analysis of pupil data, to assess the current capabilities and set appropriate and realistic targets for each pupil	satisfactory It is clear there is a good level of challenge in English and Maths lessons for all pupils Planning and teaching shows a range of learning opportunities and provides for a range of learning styles. At review, it can be demonstrated all pupils are on track to achieve their end of year targets		
Pupil behaviour management	**2 Promote good progress and outcomes by pupils** **7 Manage behaviour effectively to ensure a good and safe working environment**	Deputy Head to support the development of whole class behaviour management strategies and also individual behaviour plans for the pupils who are beginning to exhibit high levels of unacceptable behaviour.	School behaviour and values policies to be followed at all times Negative pupil behaviours pre empted to prevent confrontation and the need to shout Routines and timings adhered to so that pupils can develop independence and self-discipline Incidents of high level misbehaviour reduced to zero.		