



Brimsdown
Primary School
Enfield



**Schools' Personnel: get the
chemistry right**

Brimsdown Primary School Teacher Capability (Performance) Policy

Autumn 2013

**Adapted by the London Borough of Enfield's
Schools' Personnel Service from a model originally published by the**

**Department for
Education**



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1. Introduction and General Information

Introduction

Schools and Local Authorities are required by law to have a policy for all staff which deals with lack of capability.

This 'Teacher Capability (Performance) Policy' is a formal capability process which applies specifically to teachers. Teacher capability matters arising due to ill health, and all support staff capability matters, will be dealt with under separate arrangements.

The Policy contained within this document is intended to be implemented in a fair, efficient manner, in accordance with good employment practice. Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through appraisal and performance review will help to avoid the need for initiating a formal capability process. In many cases, an improvement may be achieved informally with appropriate minimum support and attention. However, it must be acknowledged that, in other cases, the more formal process set out here will be necessary.

(In the Policy, note that text in *italics* provides additional commentary for information and guidance, or otherwise requires amendment to reflect particular circumstances).

Adoption and Review of the Policy

This Policy was originally part of a joint model Teacher Appraisal and Capability Policy produced by the Department for Education (DfE) for use by Schools and Local Authorities in the Summer of 2012 to take effect from the 2012/13 academic year onwards.

Following adoption of the Appraisal and Capability Policy(ies), Brimsdown Primary School will review this Capability Policy in response to any relevant statutory changes and/or at any other time it is considered necessary or appropriate to do so. At a minimum it will be reviewed every three years.

Purpose of the Policy

The aim of the formal capability process is to seek to achieve an improvement in an individual's performance within the context of Brimsdown Primary School's plan for improving educational provision and performance, and the standards expected of teachers. It also sets out the process that will apply when sufficient improvement cannot be achieved.

Application and Scope of the Policy

This 'Teacher Capability (Performance) Policy' applies only to teachers (including the Head Teacher) about whose performance there are serious concerns that the appraisal process has been unable to address.

It should be noted that any formal capability matters arising under this Policy may be dealt with in accordance with Collaboration or Federation arrangements in relevant circumstances. (See Appendix 1 at the end of this document).

2. Teacher Capability (Performance) Policy

Transition from Appraisal

If the Head teacher, or member of staff nominated by the Head teacher, is not satisfied with progress, having raised a formal 'cause for concern' and following a period of support and review as part of the appraisal process, the teacher will be notified in writing that the appraisal system will no longer apply, that their performance will be managed under the capability procedure and that they will be invited to a formal capability meeting.

At this stage, Brimsdown Primary School will seek advice from their personnel provider if they have not already done so.

(The following paragraph relates only to community schools and PRUs. Foundation and Voluntary Aided schools should delete it).

It is noted that, in respect of community schools and PRUs, the Local Authority has a statutory right to send a representative to all proceedings relating to the dismissal of any teacher and offer advice. Where the Local Authority sends a representative, they will be allowed to attend. Any advice offered by the Local Authority will be considered by the Head teacher, or *Governors/PRU Management Committee members*, as appropriate, when reaching a decision.

Prior to the 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.

Formal Capability Meeting

This meeting is intended to establish the facts. In relation to Head teacher capability, the meeting will be conducted by the Chair of Governors (or another Governor)/Chair of the PRU Management Committee (or another member of the PRU Management Committee). In relation to the capability of other teachers, the meeting will be conducted by the Head teacher or another appropriate senior member of staff. The meeting allows the teacher, 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 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 meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may 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 meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings (for example, which of the standards expected of teachers are not being met);
- 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, for example, the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain any support that will be available to help the teacher improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be, for example, between four and ten weeks. (The precise time period set will be reasonable and proportionate, but not excessively long, and will provide sufficient opportunity for an improvement to take place); and
- warn the teacher formally that failure to improve within the set period could lead to dismissal. This warning may take the form of a formal written warning or, in very serious cases, a final written warning.

Notes will be taken of formal meetings and a copy sent to the teacher. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring and Review 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 review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal Capability Review Meeting

As with formal capability meetings, at least five working days' notice 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 person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. 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;
- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The teacher will be invited to a decision meeting.

Capability Decision Meeting

As with formal capability meetings and formal capability review meetings, at least five working days' notice 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 an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at Brimsdown Primary School.

(** In Foundation Schools and Voluntary Aided 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 and Maintained Nursery Schools, the power to determine that the member of staff should no longer work at the School can be delegated in the same way as above but it is the Local Authority (as the employer) that actually dismisses staff (or – for those that work in more than one School – requires them to cease to work at the School. For this purpose, PRUs will be treated in the same way as Community Schools as the Local Authority is the employer).

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.

Decision to Dismiss

The power to dismiss staff in Brimsdown Primary School has been delegated to the Head teacher.

Dismissal

Community, Voluntary Controlled and Maintained Nursery Schools and PRUs Only

Once the Head teacher has decided that the teacher should no longer work at Brimsdown Primary School, s/he will notify the Local Authority of his/her 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 they work in more than one School/PRU, the Local Authority must require them to cease to work at Brimsdown Primary School.

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

(Selection should be made from the options below depending upon type, either School or PRU).

All Schools

The appeal will be dealt with impartially and, wherever possible, by three Governors who have not previously been involved in the case. However, where this number is not reasonably practicable it may be reduced to two Governors. (Note that the number of Governors hearing an appeal can be no fewer than those making the original decision if, in exceptional circumstances, Governors made the decision to dismiss rather than the Head teacher).

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

3. General Principles Underlying This Policy

Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance Procedures

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice. This document can be located on the ACAS website at: www.acas.org.uk

Confidentiality

The capability process will be treated with appropriate confidentiality at all times.

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 issued by the Department for Education.

Definitions

Unless indicated otherwise, all references to “teacher” include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by Governing Bodies, PRU Management Committees, Head teachers and Local Authorities.

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 it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Brimsdown Primary School's 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 with monitoring or formal procedures. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

Collaboration Arrangements and Federations

School Federation arrangements allow two or more schools to federate under one Governing Body, subject to the procedures set out in the relevant Regulations.

School Collaboration arrangements enable the Governing Bodies of two or more maintained schools to work together in relation to staffing functions. Each school within a collaborative arrangement will retain its own Governing body and will have joint committees. Collaborating Governing Bodies may delegate any of their functions to a joint committee in the same way that they may delegate them to a committee of a single Governing Body. (Similarly, one or more Governing Bodies may make collaboration arrangement with one or more Further Education Bodies).

The framework for the above arrangements are set out in specific legislation relating to School Governance (Federations, Collaborations, Constitution and Procedures, as relevant) as well as within Education and Inspections, Standards and Framework Acts and School Staffing Regulations. These apply to Federation and Collaboration arrangements, as appropriate.

Any references in this document to schools, Headteachers, Governing Bodies and Governing Body Panels shall, normally, also be taken to include:

- Schools, Headteachers, Governing Bodies and Panels working together under **Collaboration** arrangements (as well as Principals, Further Education Bodies and Committees, where relevant); and
- Those staff and others attached to, or associated with, schools which are part of a statutory **Federation** under the Federation Regulations and should be interpreted accordingly.

The above arrangements will also apply in the case of PRUs and PRU Management Committees, if applicable at any time.

