



# BHES

## *Capability Procedure for Teachers*

Note: in this policy reference to governing body or governors refers to the management committee and its members.

Where contextually appropriate for school read service.

From BCC model policy September 2012  
Reviewed and updated 5<sup>th</sup> October 2020

## HISTORY OF POLICY CHANGES

<b>Date</b>	<b>Page</b>	<b>Details of Change</b>
April 2022	All	Removal of Meriton logo Reviewed – no changes to body of information Reformatted Linked policies added

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### 1. Preamble

The Governing Body wishes to support its staff to achieve their full potential through regular monitoring and feedback.

This procedure applies to all teaching staff, including leadership team.

This procedure should be used in conjunction with the school's appraisal procedure.

This policy has been written and adapted inline with BBC capability procedures.

### 2. Scope

This procedure supports managers and teachers in improving performance to the required standard within a reasonable time period. The formal procedure must not be used unless there is evidence that support through day-to-day performance management has not brought about the required improvements.

Action in the case of employees who do not achieve an acceptable standard of performance because of misconduct should be conducted under the terms of the Disciplinary Policy adopted by the Governing Body.

If it is established that an employee's unsatisfactory performance is due to sickness or ill health these issues should be dealt with under the Managing Attendance Policy adopted by the Governing Body.

### **3. Headteacher's Responsibilities**

It is a Headteacher's responsibility to:

- ensure that the procedure is brought to the attention of all teaching staff;
- seek to ensure effective recruitment, induction, training and development arrangements exist so that employees are properly supported in meeting the requirements of their job;
- communicate clearly any change in the requirements of the job and provide any additional support and guidance required;
- seek to ensure that if new standards are set they are reasonably attainable by staff;
- deal fairly and consistently with an employee's continuing unsatisfactory work performance through an appropriate programme of monitoring, support and guidance, explored carefully with the individual and his/her representative;
- maintain confidentiality;
- implement appraisal within the school.

### **4. Teacher's Responsibilities**

It is an employee's responsibility to:

- undertake the duties of his/her post to the very best of his/her abilities;
- make the best use of training, development, support and guidance offered to better perform his/her duties;
- seek to ensure their own continuing professional development;
- engage in the appraisal process.

### **5. Governors' Responsibilities**

It is the Governors' responsibility to:

- undertake their duties in accordance with the terms of this procedure at Stage 2 and Stage 3;
- maintain confidentiality;
- ensure appraisal is undertaken within the school.

### **6. Day-to-day management (Professional Guidance)**

The teacher must have completed his/her statutory induction period. It is essential that any performance issues that arise are dealt with immediately to stop any escalation of unsatisfactory outcomes.

Where a teacher has been underperforming for some time and his/her underperformance has never been raised with them this should be addressed as soon as possible.

Targets and objectives should be set in accordance with the performance

management process.

The majority of performance issues arising should be dealt with through normal day-to-day management and the Headteacher or line manager (or person who is the appraiser under the appraisal scheme) should discuss concerns with the teacher as soon as they arise.

Teachers may contribute ideas on why they are underperforming and how improvements can be made.

The Headteacher or line manager may begin the process of supporting employees by meeting with them on a one to one basis and considering any reasons for underperformance e.g., (the list is not exhaustive):

- Have there been any changes since s/he started in the job e.g. have different systems been introduced?
- Is the employee fully aware of his/her duties and responsibilities?
- Have they received adequate training?

See also under “*Scope*” above regarding other policies.

Where problems are identified, a reasonable timeframe to allow for improvement should be given, (between a minimum of four and a maximum of twelve weeks). The consequences of not meeting the required improvements must be explained to the teacher. The rationale for the time frame should be documented. During this period regular meetings should take place in a confidential environment and be conducted in a supportive manner. Discussions and outcomes should be recorded. Having identified concerns or problems, Head teachers or line managers may want to take advice from HR, Occupational Health, School Improvement or other managers who have dealt with similar situations.

Should it become clear that the teacher’s performance is not reaching a satisfactory standard, the matter should be dealt with under this formal capability procedure. The employee should be advised immediately in writing and any meeting/discussion which is part of the professional guidance and support shall be ended. The Headteacher or line manager should proceed to Stage 1 of this Procedure and inform the teacher of this in writing. The letter should clearly outline:

- the level of concern;
- the evidence used to reach this conclusion;
- the expected level of performance required;
- the type of support available;
- the consequences of failing to improve their performance.

## **7. Provisions of procedure**

An employee has a right to be accompanied by a TU rep or work colleague at each stage of this procedure.

An employee must be given at least five working days' notice of meetings under the formal procedure. If an employee cannot attend a meeting it may be re-arranged within five working days.

In the event that a teacher fails to attend a formal meeting due to sickness, then the advice of Occupational Health may need to be sought as to: (a) the teacher's ability to attend such a meeting or, (b) if attendance is not recommended on health grounds, when this position might change. Whatever the Occupational Health advice, however, the performance improvement meeting may still need to proceed on the basis of the above if necessary and reasonable.

The procedure includes a number of time-related targets for reviewing and assessing performance. In exceptional circumstances the guidelines may need to be exceeded, in which case the employee will be advised accordingly.

When this procedure applies to Headteachers, the term "Headteacher" will be substituted with "a nominated Governor" and "Teacher" with "Headteacher".

Where it is intended to invoke these procedures against a Trade Union official, a Trade Union Officer (Regional Officer) should be informed as soon as possible. No action will normally be taken against the Trade Union Official until the allegations have been discussed with the Trade Union Officer (Regional Officer) of the relevant union.

## **8. Education of Pupils is in Jeopardy**

In very exceptional circumstances Stage 1 and Stage 2 of the formal procedure will be replaced with an assessment period of a maximum of four working weeks. This will only occur where the Headteacher can demonstrate that the "education of pupils is in jeopardy". This action must only be taken after consultation and agreement from the SIO and the HR Business Partner (or equivalent). Where the teacher is a member of a Teacher Association, the Branch Office should be contacted and informed before the employee is notified. This is to ensure the appropriate support and advice is available at the earliest stage. Where the teacher is a Trade Union official, the relevant Regional Officer should be notified.

## 9. Formal Procedure

### Stage One

The formal procedure should be used where professional guidance has not achieved the desired outcome and should address all the matters that are giving cause for concern.

The Headteacher will call the teacher to attend a formal Stage 1 Capability meeting in order to discuss the problem areas. At the meeting, the Headteacher will confirm that:

- A first level warning will be issued. The teacher's performance must improve to the required standard within the timeframe specified.
- A performance improvement plan (PIP) will be put together to support the teacher.
- A date for the formal review meeting will be set. This will typically be between 4 – 7 weeks from the formal Capability meeting, and may be varied at the discretion of the Headteacher. The rationale for the time period will be recorded.
- Progress with the teacher will be regularly reviewed during this period. The frequency of meetings will be agreed and revised as necessary to support the employee.
- The teacher has the right to appeal against this sanction.
- Failure to improve and maintain improvement during this period could lead to Formal Stage 2 of this procedure being invoked.
- These outcomes and a copy of the PIP will be confirmed in writing within five working days of the meeting.

At the end of the formal review period the Headteacher will review the teacher's performance against the PIP.

If the teacher's performance has improved to the required standard the Headteacher will:

- Meet and discuss this with the teacher.
- Confirm it in writing within five working days of the meeting.
- If necessary, his/her objectives could be clarified.

If the teacher's performance has not improved to the required standard, then the Headteacher will either:

- extend the formal review period for a specific time and confirm this in writing, giving reasons or follow the procedure set out in Stage Two.

Where a teacher has been given a warning and his/her performance has improved, but the improvement is not sustained (due either to the same or to different issues) for a

period of 12 months after the warning has been issued, the Headteacher may wish to consider proceeding straight to Stage Two of the procedure.

## **Stage Two**

The Headteacher will call the teacher to attend a formal Stage 2 Capability meeting in order to discuss the outstanding problem areas. At the meeting, the Headteacher will confirm that:

- A second level warning will be issued. The teacher's performance must improve to the required standard within the timeframe specified.
- A revised performance improvement plan (PIP) will be put together to support the teacher.
- A date for the formal review meeting will be set. This will typically be between 4 – 6 weeks from the formal Capability meeting, and may be varied at the discretion of the Headteacher. The rationale for the time period will be recorded.
- Progress with the teacher will be regularly reviewed during this period. The frequency of meetings will be agreed and revised as necessary to support the employee.
- The teacher has the right to appeal against this sanction.
- Failure to improve and maintain improvement during this period could lead to dismissal.
- These outcomes and a copy of the PIP will be confirmed in writing within five working days of the meeting.

At the end of the formal review period the Headteacher will meet with the teacher and review the teacher's performance against the PIP.

If the teacher's performance has improved to the required standard, the Headteacher will:

- Meet and discuss this with the teacher.
- Confirm it in writing within five working days of the meeting

If the teacher's performance has not improved to the required standard, then the Headteacher may:

- extend the formal review period for a specific time and confirm this in writing, giving reasons or
- move to the dismissal procedure.

### **Stage Three: Dismissal**

Stage 3 will apply where a teacher fails to improve his/her performance to the required standard under Stage 2.

The Headteacher or line manager will invite the teacher to a hearing before the Headteacher or governor/a panel of Governors who have not been party to any previous performance improvement measures involving the employee. The panel will be assisted in an advisory capacity by a representative of the Director of Education. At the end of the meeting, the panel may conclude that:

- there should be a further period of guidance, support, monitoring and review
- the teacher should be relegated to an alternative post within the school (this may include the withdrawal of any TLR and/or withholding experience points).
- the teacher should be dismissed.

The Headteacher's/governors' decision should be confirmed to the teacher, in writing, within five working days.

The teacher will have the right of appeal against dismissal to a panel of governors.

The teacher should lodge his/her appeal with the Clerk to Governors within 10 working days of receipt of the letter confirming the outcome of the hearing. The letter should set out the grounds of appeal.

The Clerk to Governors will write to the teacher to confirm the agreed date, time and place of the hearing providing 10 working days' notice of the hearing.

The outcome of any capability case should be reported anonymously to the Curriculum & Staffing Committee (C&S Committee) and to the Full Governing Body (FGB) after its conclusion.

### **Withdrawal of delegation**

In the event that the governors' delegated authority is withdrawn although this procedure will remain in place the decision-making authority for dismissal will return to the Local Authority in the place of the headteacher and governors. Appeals against dismissal will be heard by elected members.

## **10. Linked Policies**

BCC Code of Conduct for employees  
 Staff Code of Conduct (BHES)  
 Complaints Procedure  
 BCC Code of Conduct for Carrying out Investigations  
 BCC Grievance Policy  
 DCC Disciplinary Policy  
 BCC Whistleblowing Policy

## Appendix 1: Performance Improvement Plan

Teacher:

Position:

Stage:

Assessment period:

Concern	Standard Expected (target to be set)	Support (means, by whom)	By When	Indicator of Achievement

Signed ..... (Headteacher)

Date .....

Signed ..... (Teacher)

Date .....