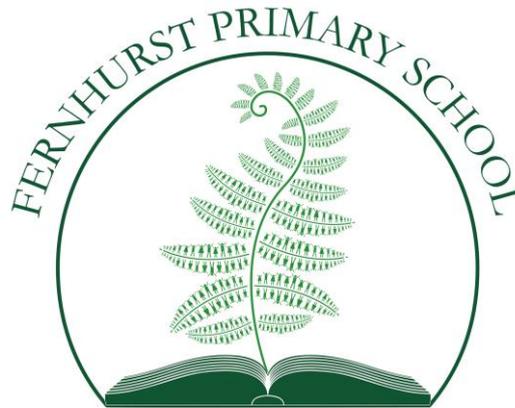


# FERNHURST PRIMARY SCHOOL



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## Capability Policy



<b>Created</b>	2011 WSCC Model Policy
<b>Responsible Committee</b>	Finance & Resources
<b>Re-Approved</b>	June 2018
<b>Next Review</b>	June 2021

WS Model Policy dated April 2011;

## **Model Capability Policy for all Staff**

### **1. Aim of the Policy**

The Governing Body expects all employees to perform their roles to the required standard, however it is recognised that there will be times when an employee's performance falls below this standard. This may be as a result of the employee not possessing the skills, capabilities and aptitudes to be able to perform their role effectively, or as a result of not demonstrating the behaviours and attitudes to perform their role effectively and appropriately.

The aim of this policy is to encourage and support employees to improve their performance. This policy provides the framework for managing employees who are unable to demonstrate the required level of performance in their role.

If the required standard is not met for reasons of misconduct (e.g. refusal to co-operate or follow instructions) then this will be treated as a disciplinary matter under the disciplinary policy.

If the reason for poor performance is as a direct consequence of an underlying health condition or disability, this will be managed through the sickness policy. Sickness absence will also be managed through the sickness policy.

This policy should be read in conjunction with the guidance notes.

### **2. Scope**

This policy applies to all school employees, on permanent, fixed term or temporary contracts.

Where action is being taken regarding the Headteacher's performance all activities will be carried out by a member of the Governing Body supported by a senior colleague from the WSCC Learning Service representing the Director of Learning.

In the case of a Headteacher where an asterisk \* is shown, the term should be read as Chair of Governors and senior colleague from the WSCC Learning Service representing the Director of Learning. Where *italics* are shown the italicised term is applicable to Headteachers only.

### **3. Guiding principles**

- The Headteacher/Line Manager is responsible for making their expectations of employees clear and actively managing their performance through regular meetings with the employee and/or the Performance Management Process.

- Early intervention is critical when dealing with poor performance.
- The Headteacher/Line Manager \*is expected to raise concerns with individuals about their performance at the earliest possible opportunity and put in place measures to help support the employee reach the required standards.
- Employees are expected to raise with their Headteacher/Line Manager as soon as possible any issues that are impacting on their ability to perform at work.
- Employees are jointly responsible for their own development and for participating in development and training activities. For teaching roles this will also be a requirement for maintaining professional registration.
- Redeployment is not an option under the Capability Policy nor is there the scope to automatically 'demote' an employee. However in certain circumstances it may be possible to agree a mutual variation to contract either to a lower graded or different post, under an extended review period as an alternative to dismissal, this will be without pay protection.

#### **4. Right to be accompanied**

Employees have the right to be accompanied at all formal meetings within the procedure. There is no right to be accompanied to meetings in the informal stage or regular meetings with the employee during review periods.

The employee's companion can be:

- a work colleague,
- a Trade Union Official or
- an accredited Trade Union Representative.

If the employee is attending the Final Review and Decision Meeting, at which the employee might be dismissed, or a dismissal appeal meeting, the employee may bring a legal representative as their companion, for example a solicitor.

#### **5. Informal stage of the procedure**

Cases of poor performance are often best dealt with informally through regular meetings with the employee, or through 'a quiet word'. This approach can be effective in dealing with problems quickly and confidentially.

The Headteacher/Line Manager\* will speak to the employee and;

- Explain to the employee how their performance has fallen below the

required standard;

- Set out the required standard of performance and the timeframe for improvement;
- Explore with the employee the reasons why their performance has fallen below the required standard;
- Put in place all reasonable steps to support the employee in achieving the required standard; and;
- Advise the employee that if improvement is not seen within the specified timescales then that this will result in moving to the formal procedure.

The Headteacher/Line Manager\* should make a written note of the meeting outlining the discussion and the agreed improvements. The employee should be offered the opportunity to add their comments to the meeting note, which could take the form of supervision notes, a letter or email, or there is a form available on the WSGfL, which can also be used.

A copy of the note must be given to the employee.

Should it become necessary to invoke the formal stage for teachers the Headteacher/Line Manager\* must inform the teacher in writing that once the formal stage has commenced the school is required to arrange for a referral to be made to the General Teaching Council for England should the teacher chose to resign during the period that the formal stages are in progress. This referral process is usually completed by WSCC on behalf of the school.

For further details: please see the Guidance notes.

## **6. The Formal Procedure**

For a detailed outline of the procedure and additional information please refer to the Guidance notes.

The formal procedure should be used when, despite the help and support provided in the informal stage, the employee's' performance has not reached the required standard or the employee's level of performance is sufficiently serious and action is warranted.

The formal procedure consists of three stages:

<b>Stage</b>	<b>Purpose.</b>	<b>Outcomes</b>	<b>Meeting Chaired by</b>
Stage 1 - Initial Formal Meeting	To formally discuss the shortfall in the employee's performance and make clear the required standards, set objectives and timescales for improvement.	<ul style="list-style-type: none"> <li>➤ Written notice to improve</li> </ul> OR <ul style="list-style-type: none"> <li>➤ No action is necessary.</li> </ul>	Headteacher /Line Manager*.
Stage 2 - Formal Review Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide the next steps.	<ul style="list-style-type: none"> <li>➤ Final Written notice to improve.</li> </ul> OR <ul style="list-style-type: none"> <li>➤ Extended monitoring period is given</li> </ul> OR <ul style="list-style-type: none"> <li>➤ Employee has improved and formal procedures are discontinued.</li> </ul>	Headteacher /Line Manager*.
Stage 3 - Final Review and Decision Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide on the appropriateness of continuing the employee's employment.	<ul style="list-style-type: none"> <li>➤ Dismissal with notice.</li> </ul> OR <ul style="list-style-type: none"> <li>➤ Extended monitoring period is given.</li> </ul> OR <ul style="list-style-type: none"> <li>➤ Employee has improved and formal procedures are discontinued.</li> </ul>	Headteacher /panel of governors*

There is the right of appeal at all stages of the formal Capability policy.

In cases where the employee does not reach and maintain the required standard of performance, the employee may be dismissed. The employee has the right to appeal against any such dismissal to a Panel of 3 Governors representing the Governing Body of the School.

These would normally be followed sequentially, however there are certain circumstances where it would be appropriate to initiate the performance improvement policy at a later stage, this includes:

- Where a notice of improvement is still 'active' and the employees' performance lapses during this period; and.
- Where there is a significant or sudden drop in performance that jeopardises the education of children.

In cases where it is not clear the procedure should commence, advice should be sought from the HR Management Advice Team (HRMA).

### **Stage 1 – Initial Formal Meeting.**

Please refer to the guidance document for full information about the operation of the policy.

#### Notification of the meeting

The employee will be invited to attend an Initial Formal Meeting under the Capability Policy. The employee will be given at least 5 working days notice of the meeting.

Any documentation to be considered at the meeting should be sent to the employee with the invitation to attend the meeting.

The employee has the right to be accompanied to this meeting. In order to exercise their right to be accompanied, the employee should notify the name and position of their companion to the Headteacher/Line Manager\* and provide copies of any documentation that they wish to have considered at the meeting, no later than 3 working days before the meeting.

The employee may request a change of the date or time of the meeting. if they, or their companion, are unable to attend at the invited time. The employee must provide reasons for this request.

#### Failure to attend.

All parties should make every effort to attend the Initial Formal Meeting.

- If the employee fails to attend the meeting for reasons outside of their control, the meeting may be postponed and re-arranged. Usually only one postponement and re-arrangement will be agreed.
- If the employee refuses to attend, the meeting can be held without the employee present. The employee should be allowed to submit documents for consideration at the meeting.
- If the employee insists on a companion being present who continues to be unavailable, and a suitable companion is available,

then the Chair of the meeting may decide to proceed with the meeting.

#### At the meeting

The purpose of this meeting is for the Headteacher/Line Manager\* to formally discuss with the employee their shortfall in performance and make clear the standards required in the post, to set objectives and a timescale for improvement.

The employee should be given the opportunity to respond to the points made by the Headteacher/Manager\* and put forward their point of view.

#### Notification of the outcome

The Headteacher/Line Manager\* will give their outcome verbally at the meeting and follow this up in writing within 5 working days of the meeting.

If it is decided to issue a notice to improve, it will contain:

- Confirmation of the notice to improve;
- A support and development plan outlining the objectives the employee has to meet, the timescale for improvement and support to be given; and
- The date for the formal review meeting.

If it is decided that it is not appropriate to issue a notice to improve the letter will confirm the Headteacher/Line Manager's\* decision and rationale.

#### Monitoring period.

During the monitoring period the Headteacher/Line Manager\* must continually monitor and discuss the employee's performance to check progress against the objectives and timescales outlined in the notice to improve. This should be done through regular meetings with the employee (where regular meetings are not normally held regular progress check meetings will need to be convened), although depending on the situation more frequent meetings may need to be held.

#### Timescales for improvement

The timescale for improvement will depend on the nature of the issue. As a guide it would be reasonable to allow between 4 weeks and 3 months, between the review meetings, with a view to holding the final review and decision meeting within 2 terms of commencing the process.

In cases where the education of children is in jeopardy, only one monitoring period of no more than 4 weeks is allowed for.

### Appeals against a notice to improve or an extended monitoring period.

An employee who wishes to appeal against their notice to improve or extended monitoring period must do so within 5 working days of receiving written notification of the notice to improve.

In their letter, the employee must set out the grounds for their appeal, and this must be sent to the clerk to the Governing Body, who will, on advice from the HR Management Advice Team, within 10 working days of receipt of the appeal, arrange the meeting for the employee's appeal to be heard.

The appeal will be heard by a panel of governors who are suitably independent to the case.

At the appeal meeting, the employee will be asked to give their reasons for appeal. The meeting will focus on these "grounds" for appeal and will not be a re-hearing of the formal meeting at which the notice to improve was issued.

The outcome of the Appeal meeting can be one of the following:

- Not to uphold the Appeal, in which circumstances, the notice to improve will remain unamended;
- To partially uphold an Appeal – whereby the Appeal panel may find certain grounds to concur with the employee and adjust the objectives and timescales set out in the notice to improve;
- To partially uphold the Appeal and allow the employee an extended review period under a notice to improve; or
- To uphold the employee's appeal in full and revoke the notice to improve that was issued.

The Appeal Panel cannot increase the level of the notice to improve given to the employee.

The outcome of the meeting will be communicated in writing to the employee within 5 working days.

Further information about the structure and format of the appeal meeting is given in the Guidance notes.

### **Stage 2 – Formal Review meeting**

The stage 2 – Formal Review meeting mirrors the initial review meeting except as detailed below.

- Although the date for the formal review meeting should have been set as part of the Stage 1 Meeting, the employee must still be invited to attend the Formal Review meeting and be given at least 5 working days notice of the meeting.

- Information detailing the employee's progress toward the achievement of the objectives collected during the review period should be considered as part of this meeting. Any copies of documentation to be considered at the meeting should be provided to the employee in advance with the invitation to attend the meeting. Details of witnesses attending should also be provided.
- The purpose of this meeting is for the Headteacher/Line Manager\* to review the evidence of progress that the employee has made against the objectives set out in the notice to improve.
- If an employee's performance has improved, the employee should be advised that although formal procedures will be discontinued, the written notice to improve will remain 'active' for either a period of 9 months or until the end of the current academic year (i.e. 31 August), whichever is the longer period from the date of this meeting, and should their performance lapse they will be referred back into this procedure at stage 2.
- If the employee is issued with a final written notice to improve. The employee should be advised at the meeting and in the notice to improve, that if they do not meet the required standard within the specified timescale, that they could be dismissed from employment.
- An extended monitoring period, under the written notice to improve may be given, where it is considered that with a bit more time the employee may be able to achieve the required standard. At the end of the extended monitoring period the Headteacher/Line Manager\* will reconvene the stage 2, Formal Review meeting and will then decide whether to discontinue proceedings, or issue a final written notice to improve. During the extended monitoring period the employee's performance should be monitored during normal regular meetings with the employee (or regular progress review meetings will need to be held, where regular meetings are not convened).

### The appeal process

The appeal process for stage 2 mirrors the process at stage 1.

### **Stage 3 - Final Review and Decision Meeting.**

Stage three of the procedure mirrors stage 1 and 2 except as detailed below.

- The role of the Headteacher and Governors in the dismissal of an employee at a school with a delegated budget is determined by the Schools Staffing Regulations (England) 2009 and is summarised in section 7 of this policy.
- The governing body is required to approve procedures for the

dismissal of an employee. The Local Authority procedures, which have been the subject of consultation are recommended for adoption and are included as Part B. The meeting must be held in accordance with these procedures.

- Given the potential outcomes of this stage in community, controlled and maintained special schools this meeting should be attended by a representative of the Director of Learning, this role would normally be undertaken by a HR Management Advice Representative present at the meeting.
- Although the date for the Final Review and decision on dismissal meeting should have been set as part of the Stage 2, meeting, the employee must still be invited to attend the Final Review and Decision meeting and be given at least 5 working days notice of the meeting.
- The purpose of this meeting is for a Headteacher/ Panel of Governors\* to decide what action is now appropriate, given the employee's current level of performance and the help and support that the employee has been given. Information collected during the capability process should be compiled into a report, which details the support that has been given, the level of performance achieved and makes a recommendation on the future employment of the employee based on this evidence. Any copies of documentation to be considered at the meeting should be provided to the employee with the invitation to attend the meeting. Details of witnesses attending should also be provided.
- The meeting must be conducted in accordance with the agreed procedure as described in Part B.
- The employee may be dismissed with notice as a consequence of this meeting. This should be confirmed in writing within 5 working days of the meeting. In community, controlled and maintained special schools the Local Authority is required to give notice of termination within 14 days following receipt of confirmation from the school. In voluntary aided schools the Governing body shall issue notice of dismissal. A separate notice of dismissal will therefore be issued to confirm the reasons for dismissal, the last day of employment and contractual notice.
- If formal procedures are discontinued (because the employee has met the required standard), the employee should be advised that the final written notice to improve will remain 'active' for 12 months from the date of this meeting. Should their performance lapse within this period they will be referred back into this procedure at stage 3.
- An extended monitoring period, under the final written notice to improve may be given, where it is considered that with a bit more time the employee may be able to achieve the required standard.

At the end of the extended monitoring period the Final Review and Decision Meeting will be reconvened and final decision to either dismiss the employee with notice, or discontinue proceedings, will be made. During the extended monitoring period the employee's performance should be monitored during normal regular meetings.

- If an employee wishes to appeal against being given an extended monitoring period, then the procedure to be followed mirrors that at stages 1 and 2.

#### Requesting an Appeal against Dismissal.

The employee must write to the clerk of the governing body within 5 working days of receiving written notification of the outcome. In their letter, the employee must cite their reasons for Appeal.

The procedure to be followed at the appeal is set out in section B.

A Panel of Governors suitably independent to the case will hear the appeal and it will be a re-hearing of the case and may involve witnesses attending.

The employee may be accompanied, as at other stages in the procedure by a companion, but in the case of a dismissal appeal the companion may be a legal representative, for example, a solicitor.

This is the final stage in the Capability Procedure.

### **7. Legal framework**

#### **Dismissal: Community, Voluntary Controlled, Community Special & Maintained Nursery Schools**

The role of the Headteacher and governors in the dismissal of an employee at a school with a delegated budget is determined by the School Staffing (England) Regulations 2009 which provides as follows:

- i) Where a Headteacher or governing body is considering dismissing an employee, it must give him/her an opportunity to make representations (including oral representations) to the person(s) taking the decision, and it must have regard to any representations made;
- ii) If a determination is made to dismiss the employee, the Local Authority must be notified within 14 days, and they must issue notice of dismissal or terminate the contract without notice if entitled to do so by reason of the employee's conduct;
- iii) The employee must be given the opportunity to appeal against the decision to dismiss. If the subsequent appeal reverses the dismissal decision, notice (or the dismissal itself, in cases of dismissal without notice) may be rescinded.

**NB** the governing body is required to approve procedures to implement (i) and (ii). The Local Authority procedures have been subject to consultation and are recommended for adoption.

### **Dismissal: Foundation, Voluntary Aided & Foundation Special Schools**

The School Staffing (England) Regulations 2009 provides that, for aided schools with delegated budgets, the governing body (delegated as appropriate) shall have power to appoint, suspend and dismiss staff as it thinks fit (in accordance with their Articles of Government).

## **8. General Points**

### **Overlapping Procedures**

In certain circumstances an employee may have a difficulty that is covered by two policies; or another difficulty arises during the application of one policy. In these circumstances the meetings required could be combined to ensure that the issue is dealt with in its' entirety rather than viewed in isolation. The aim should be to focus on resolving the difficulty, ensuring that the essential elements from each procedure have been included in order to minimise the number of meetings and correspondence.

HRMA can provide advice in these circumstances.

### **Link to Performance Management Framework - Policy And Process**

If serious weaknesses are identified in an employee's performance the performance management/review will cease and this procedure will be implemented. At the initial stage of this procedure the evidence from the performance management/review that prompted the instigation of this procedure may be submitted.

### **Trade Union representatives.**

No formal action will be taken against an accredited representative of a trade union, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

### **Employees with disabilities**

If an employee requires any reasonable adjustments to be made to enable them to fully participate in the process, they should notify their Headteacher/ Line Manager as soon as possible (and providing a minimum 3 working days notice). See the Guidance notes for further information.

## **Part B – PROCEDURES FOR THE GOVERNING BODY**

### **9. Rules of Conduct for a Dismissal Hearing and Appeal**

Each governing body should have a procedure to deal with the consideration of dismissals. It is suggested that the Rules of Conduct of Dismissal Hearings set out here should form the basis of this, subject to the following amendments:

- a. At **least** 5 clear working days' written notice shall be given to the employee of the date, time and place of the dismissal or the appeal hearing advising of his/her right to be represented. The notice calling the employee to the capability hearing shall include a statement of any allegation, complaint or adverse report concerning the employee's conduct or capacity which is to be considered;
- b. The concerns about the employee's capability will be presented by a person approved by the governing body\*/Headteacher (depending on whether or not the authority to dismiss has been delegated to the Headteacher), and this may be, for instance, the Headteacher or deputy Headteacher, or a member of HR Management Advice or Legal Services Unit;
- c. The Headteacher or panel of governors may be advised by a Legal representative or a representative from HR Management Advice and that person, together with a representative of the Director of Learning, may retire with the panel for the purpose of giving advice (they do not, however, have any role in making the decision);
- d. Persons presenting evidence shall not retire with the panel of governors when it considers its decision, but the panel may recall anyone to clarify evidence previously given, provided that the two parties are also in attendance when that evidence is given;
- e. At the conclusion of the hearing, if it is considered that dismissal should take effect the employee will be informed orally if possible and in any event the decision will be confirmed in writing within 5 working days.
- f. In Community, Community Special, Voluntary Controlled and Maintained Nursery Schools, the Local Authority is required to give notice of contract termination within 14 days following receipt of confirmation from the school. Termination shall be in accordance with the notice required in the contract of employment. In voluntary aided schools the Governing Body shall issue notice of dismissal. The letter giving notice of dismissal will include the individual's right of appeal.
- g. In the case of an appeal, the employee shall set out in writing the grounds for the appeal, to be lodged with the clerk to the governing body, within 5 working days of receipt of written confirmation of the

dismissal;

- h. The panel hearing the appeal may uphold the original capability decision, or modify it, by substituting a lower level of capability action or dismiss the concern(s) altogether. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment. Once the decision has been reached, it should be given orally at the hearing if possible and confirmed in writing to the employee within 5 working days.

#### **10. Conducting a Dismissal Meeting (Including Appeal Meetings)**

- a. Copies of this Procedure will be held in every school and be freely available to all employees.
- b. Those involved in capability proceedings need to be fair, impartial and reasonable throughout.
- c. The following rules of conduct shall apply to all formal dismissal meetings including appeal meetings under this Procedure.
- d. A governor is ineligible to serve on a capability dismissal committee where he/she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident or involved in a matter, which results in capability proceedings.
- e. Where a panel of governors is required to determine an appeal against action short of dismissal or a determination relating to the dismissal of a member of staff or any appeal against such a determination, that committee or panel will include no fewer than three governors and no governor who has had prior involvement in the case shall consider an appeal against that decision. The membership of an appeal committee shall include no fewer members than the committee whose decision is the subject of appeal (where this is relevant).
- f. Meetings will be held at a time and place, which, as far as possible, are acceptable to all parties. A meeting should be adjourned to another date after 5 hours or at 6 p.m.; whichever is the earlier, unless both parties agree otherwise.
- g. Copies of all documentary evidence will be available to both parties as early as possible in advance of the meeting.
- h. Accommodation will be provided for the employee and his or her representative or friend/work colleague to meet in private before, during and after the meeting.
- i. The Headteacher/senior officers, any governor(s) and the employee and his or her representative will attend throughout the meeting. Witnesses will be present only for their submission to

the meeting (if appropriate to the case).

- j During the meeting, the Headteacher/*senior officer*, presenting officer, or the employee, may request one or more short adjournments. Such requests will not be unreasonably refused.
- k Witnesses will be instructed not to discuss their evidence with other witnesses during the meeting.
- l The Chair of the Panel/Headteacher should start the proceedings by introducing himself/herself and others present to the employee, explaining the role of each of those present. The employee should introduce any person who is accompanying him/her. The chairman/Headteacher should then establish with both parties the names of any witnesses they intend to call to the meeting.
- m The Headteacher/*senior officer* or *presenting officer* will first present the concerns(s) against the employee/*Headteacher*, as appropriate, providing such evidence, documentary or by oral statements of witnesses, as necessary.
- n The employee or his/her representative will then be asked to give an explanation of the circumstances which led to the convening of the capability meeting, providing such evidence, documentary or by oral statements of witnesses, as appropriate.
- o All witnesses may be questioned by the Headteacher/*senior officer*, the employee or his/her representative, any governor, and the representative of the Authority (if present) immediately following their submission to the meeting. The Headteacher/*senior officer* (in situations where the Headteacher is presenting the case) or presenting officer and the employee may be similarly questioned. Following the completion of both parties' submissions, witnesses may be recalled - but only to clarify evidence previously given, not to introduce any new material.
- p The Headteacher/senior officers or presenting officer and the employee or his or her representative may sum up following the conclusion of statements by both parties. The employee will be given the opportunity to speak last. Neither summary may introduce any new material.
- q The Headteacher or chair of the meeting, having given the employee the opportunity to state his/her case, may adjourn the meeting for further investigations before a decision is made.
- r At the conclusion of the meeting, all those present except the panel and adviser should leave the room to allow them to deliberate in private. The Headteacher/chair, may recall the Headteacher/senior officer or presenting officer and the employee/representative, to clarify points of uncertainty on evidence already given. If recall is necessary, both parties must

return even if only one is concerned with the point giving rise to doubt.

- s In coming to a conclusion on the facts of the case, the panel will need to decide based on the evidence presented whether the employee's employment should be terminated. Once a determination has been reached, both parties should be recalled to the meeting. The Headteacher/chairman should inform the employee of the determination and right of appeal. In exceptional circumstances, it may not be possible to reach a decision on the day of the meeting. In this case, both parties should be recalled to the meeting and so advised. The Headteacher/chairman should explain the reasons and inform the employee when the determination is likely to be reached. This must be no later than two working days after the meeting.

**Written By:** HR Policy and Practice Team (LRW).

**Date:** 1<sup>st</sup> April 2011.

**Review Date:** October 2013.