Raddlebarn Primary & Nursery School

Capability Procedure for Teachers

Adapted from Birmingham HR for School document

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1.0 Purpose

1.1 In order to ensure that required professional standards of teaching are achieved and maintained and to comply with the requirements of the School Staffing Regulations 2009 for a capability procedure, the governing body of _____ School has adopted the following capability procedure. This procedure is to be implemented where a teacher falls below a certain level of competence and professional standards which is expected of them on a regular basis. This procedure will be implemented having regard to the most recent guidance issued by the local authority.

2.0 Introduction

2.1 In this procedure: -

- the 'Local Authority' or the 'Authority' means Birmingham City Council acting in its capacity as a Local Education Authority.
- Any reference to a 'school', also includes an 'academy'.
- references to the Director of Education include any other senior officer of the City Council designated by them.
- 'teacher' means a teacher, including a headteacher, employed to work at the school.
- reference to a 'headteacher' includes a 'principal' in an academy as appropriate; and
- Any reference to a committee of the governing body also includes an 'academy trust', 'board of directors/trustees' or equivalent body for an academy.

2.2 As part of their acknowledged management responsibilities, and as part of the arrangements for the supervision, appraisal, support and training of teachers, headteachers or other staff designated by the headteacher may from time to time discuss aspects of capability with a teacher on a day-to-day basis. Such discussions should not be regarded as falling within the scope of the formal capability procedures but should ensure that teachers receive fair and honest feedback on their

performance, a balanced assessment, and advice and support on how their performance may be improved.

2.3 The procedure is to be implemented with the intention of supporting the teacher in achieving the required standards. The teacher needs to be aware that failure to achieve the required standards may lead to termination of their employment in accordance with this procedure.

2.4 In order to facilitate the smooth implementation of these procedures the teacher should be advised to contact their Teacher Association for advice as soon as possible.

2.5 The procedure is distinct from the disciplinary procedure which is used in cases of misconduct or that for dealing with sickness and ill health and from the rights of teachers under the separate grievance procedure.

2.6 This procedure may apply to Early Career Teachers whose appointment is subject to statutory induction. It is strongly recommended that you take further advice from your chosen Employee Relations team in conjunction with the DFE advice.

2.7 Normal standards of capability and normal procedures should apply to teachers who are school trade union representatives or local union officers, except that no action will be taken until the circumstances of the case have been discussed with a local or regional officer.

2.8 This procedure will be applied in accordance with the Instrument of Government of the School, any other statutory provisions which may apply from time to time, also the Advisory, Conciliation and Arbitration Service's Code of Practice.

2.9 The records of any case under this procedure will be confidential.

2.10 The Governing Body may decide, by formal resolution, to delegate to the headteacher the hearing of cases under section 5 of this procedure, provided that the headteacher has not been previously involved in managing the case.

3.0 Informal Meeting under Appraisal

3.1 This procedure is intended to highlight concerns in performance and provide an opportunity for a teacher to improve. **It is strongly recommended that this procedure is only implemented where the appraisal process and appropriate support provided have failed to improve the performance to the required standards. This procedure should only be implemented if the headteacher or other designated manager has sufficient recorded evidence from a variety of sources.**

3.2 As set out in the appraisal process examples of performance might be evidenced through pupil progress, observations, book scrutiny, impact of management, OFSTED

assessments.

3.3 **Any concerns should have been raised with the teacher in advance as part of the appraisal process.** If it became apparent during or at the end of the appraisal period that the teacher's overall performance was below acceptable standards the headteacher or other designated manager should have:

- met with the teacher to discuss the nature and level of the concerns,
- recorded the concerns as part of the Appraisal Scheme; and given the teacher the opportunity to reflect on it before arranging another meeting to determine what increased support would be given, the kind of improvement required, the period for improvement, how improvement would be assessed and when the situation would be reviewed. The headteacher or other designated manager should have explained to the teacher what would happen if they did not meet the required standards within the specified timescales.

During the appraisal process and throughout this procedure, consideration should be given to any mitigating or personal circumstances (including a disability or other health condition) which might explain a dip in the teacher's performance. Reasonable adjustments may be considered if the teacher has specific needs relating to a disability. A referral to Occupational Health may also be appropriate.

4.0 Capability Meetings

4.1 The headteacher or other designated manager shall review the facts and information gathered to date, adding to it where appropriate, and then write to the teacher setting out the area(s) of concern and the evidence supporting the concerns and inviting the teacher to a formal capability meeting. In addition, a school can request that an appropriate HR Manager attends to provide technical advice.

At this stage onwards the teacher may be accompanied by a trade union representative or a workplace colleague. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this procedure. Copies of any documentation to be used at the meeting shall be sent with the written notice within a reasonable timescale before the meeting to ensure that the teacher has enough time to prepare their response to the concern(s). A copy should be included for the teacher's trade union representative.

5.0 First Capability Meeting

5.1 The purpose of the meeting shall be: -

(a) to define which of the required standards have not been met and the effect of this on pupils and the provision of education in the school.

(b) to invite the teacher and/or the teacher's trade union representative to comment and/or offer an explanation for the alleged shortfalls in performance.

(c) to have regard to (a) and (b) above, whether their concern(s) remain and if no concern remains, for the headteacher or other designated manager to confirm in writing that no further action will be taken.

(d) if concerns remain, for the headteacher or other designated manager to inform the teacher of those concerns and decide what reasonable targets are to be set, (via a support plan, including a range of thorough, suitable support). This should include clarification of how long each part of the support plan shall last, and how it shall be monitored and evaluated.
where (d) applies, arrange for the support plan to be reviewed in a second meeting, to be held 7-8 working weeks after the first meeting, and set the date and time for that meeting in discussion with the teacher
and the teacher's trade union representative.

Notes of the meeting, including the support plan shall be sent to the teacher within two working days of the meeting together with a copy for the teacher's trade union representative.

6.0 Second Capability Meeting

6.1 At the second meeting progress will be reviewed against the targets, standards, and programme of action. Copies of any evidence to be presented on the teacher's performance should be sent to the teacher in reasonable time beforehand, including a copy for the teacher's trade union representative. The teacher and/or the teacher's trade union representative will have the opportunity to comment upon their performance and make appropriate representations.

The purpose of the meeting shall be:-

(a) to define which of the required standards have not been met and the effect of this on pupils and the provision of education in the school;

(b) to invite the teacher and/or the teacher's trade union representative to comment and/or offer an explanation for the alleged shortfalls in performance;

(c) To have regard to (a) and (b) above, whether their concern(s) remain and if no concern remains, for the headteacher or other designated manager to confirm in writing that no further action will be taken.

(d) if concerns remain, inform the teacher, and decide what reasonable targets are to be set (via a support plan, including a range of thorough, suitable support). This should include clarification of how long each part of the support plan shall last, and how it shall be monitored and evaluated.

(e) where (d) applies, arrange for the support plan to be reviewed in a third meeting, which can be held 6-7 working weeks after the second meeting, and set the date and time for that meeting in discussion with the teacher and the teacher's trade union representative.

(f) Where (d) and (e) applies, explain to the teacher that if the improvement which is still required has not been achieved by the date of the third meeting the matter will be referred for a hearing before a committee of governors (or, depending on the governing body's delegations, before the headteacher if the headteacher has not been involved previously in the management of the teacher's performance) which may lead to the termination of the teacher's employment in accordance with this procedure.

Notes of the meeting, including where applicable the programme of action, monitoring and evaluation and the explanation about the possibility of terminating the teacher's employment, shall be sent to the teacher within two working days of the meeting together with a copy for the teacher's trade union representative.

7.0 Third Capability Meeting

7.1 The third meeting will take place within the time set out in 4.3 (e) above. Progress will again be reviewed against the targets, standards, and programme of action, subject to any modifications to these as a result of the second meeting. As with the previous meetings, copies of the evidence on the teacher's performance should be sent to the teacher in reasonable time beforehand, with a copy for the teacher's trade union representative. The teacher may be accompanied by a trade union representative or workplace colleague and the teacher and/or the teacher's trade union representative will have the opportunity to comment on their performance. At the conclusion of the meeting the headteacher or a member of leadership team will either

(a) decide that the teacher now meets the required professional standards and that this procedure is terminated, which will be confirmed in writing; or

(b) extend the support plan for a further reasonable period if there is a prospect of the teacher meeting the required standards within this time; or

(c) refer the matter to a committee of the governing body (or, depending on the governing body's delegations, before the headteacher if the

headteacher has not been involved previously in the management of the teacher's performance) with a recommendation that the teacher's employment be terminated.

The third meeting shall be recorded in writing and a copy sent to the teacher within two working days of the meeting together with a copy for the teacher's trade union representative.

8.0 Hearing

8.1 When it has been decided to refer the teacher's capability concerns to a committee of the governing body (or, depending on the governing body's delegations, before the headteacher if they have not been involved previously in the management of the teacher's performance) a hearing shall be arranged as set out below.

8.2 There may be cases in which a teacher is simultaneously the subject of allegations being considered under one or more of the governing body's procedures for conduct, capability, or redundancy. If so, advice should be taken from their chosen Employee Relations team or appropriate HR Manager.
A formal notice to the teacher to attend a hearing should be issued in writing, with an explanation of the hearing's purpose and its place in the procedure. The letter should not only state the reasons for the hearing but should also attach copies of any documents to be used at the hearing. The letter must remind the teacher of the right to be accompanied or represented. The teacher should be asked to confirm that they will be attending the hearing, who will be accompanying or representing them (that person must be either a trade union representative or work-place colleague), and a list of any witnesses attending. The teacher/ trade union representative should also be reminded to provide this information along with any documentation on which they wish to rely at least 5 working days before the hearing.

8.3 Names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for inclusion with the documents to be used at the hearing. A second set of papers should be enclosed for the teacher's trade union representative.

8.4 In order to ensure that the teacher has enough time to prepare their response at least 10 working days' notice of the hearing should be given. It is helpful to agree a date with the teacher's trade union representative before sending the formal notice to attend the hearing. The teacher may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The committee or headteacher (as the case may be) may reject this suggestion but will do so only if it is unreasonable when they may proceed to hear the case in the absence of the teacher or the teacher's trade union representative. Advice should be taken from their chosen Employee Relations team or appropriate HR Manager on what is reasonable.

8.5 The teacher may provide documentation in their defence and give the names of witnesses whom they are asking to appear on their behalf. It is recommended that witnesses attend formal hearings in support of their written statements. This

information should be provided at least 5 working days before the hearing. Where the hearing is before a committee of the governing body the clerk to the governing body is required to ensure that all parties to the hearing receive copies of all documents in good time before the hearing (at least 5 working days before). Evidence submitted after the distribution of these documents may or may not be accepted as evidence; in such circumstances a decision will be made by the chair of the committee (or the headteacher if they are conducting the hearing) in the hearing itself, and not before. There is no requirement on the teacher to submit any documentation, other than a statement from any witness who may be called by the teacher. However, if the teacher does not intend to submit any documentation there should be a positive statement from the teacher and/or the teacher's trade union representative to this effect. Neither side will be able to use at the hearing any evidence not previously provided.

8.6 The headteacher or designated manager should normally present the case to the committee, unless the headteacher is the subject of the hearing, in which case the chair of the committee should seek the advice of the local authority (through one of the School and Governor Support Managers or other appropriate advisors) on an appropriate person to present the case.

8.7 The School Staffing Regulations provide that the headteacher is entitled to attend all governing body meetings to give advice if the meeting may relate to a determination that a person employed at the school should cease to work there (or be dismissed in the case of a voluntary aided or foundation school). The governing body must consider such advice. Whilst the School Staffing Regulations do not apply to academies, it is good practice for the principal to attend any final hearings or formal meetings for the purposes of giving advice.

8.8 The hearing will follow the procedure recommended by the local authority.

8.9 After considering the relevant evidence, the committee (or the headteacher if they are conducting the hearing) has the following options and shall decide on one of them:

- take no action against the teacher
- determine that a further defined period for improvement should be allowed
- determine that the teacher should cease to work at the school (in the case of a teacher in a community, community special, voluntary controlled or maintained nursery school) or may dismiss the teacher from a voluntary aided or foundation school on the grounds of professional capability.

8.10 The committee (or headteacher where appropriate) shall announce its decision to the parties in person or subsequently in writing as the committee shall determine. An oral announcement shall be confirmed in writing within 2 working days of the meeting, including the right of appeal.

8.11 A notification of a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school shall include a statement that the local authority will be advised of the determination to enable it to confirm dismissal as required by law. It shall also give details of the right of appeal (see below). A notice

of dismissal from a voluntary aided or foundation school shall give details of the right of appeal.

8.12 The committee (or the headteacher if they have conducted the hearing) will take advice from their chosen Employee Relations or another appropriate HR Manager on the duties to be undertaken by the teacher during the notice period.

9.0 Appeals

9.1 The teacher has the right of appeal against the decision of the committee or headteacher who has conducted the hearing. An appeal shall be to the appeal committee established by the governing body.

9.2 A teacher may appeal by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the governing body within 5 working days of receiving written confirmation of the decision. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. There is no requirement to submit any documentation if the teacher does not wish to, other than a statement from any witness who may be called by the teacher. However, if the teacher does not intend to submit any documentation there should be a positive statement from the teacher and/or the teacher's trade union representative to this effect and the teacher will not be able to use at the hearing any evidence not previously provided.

The clerk to the governing body will immediately notify the headteacher or the person representing the committee (whichever took the decision against which the teacher is appealing) of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within 5 working days.

9.3 The clerk to the governing body will then arrange an appeal committee hearing in reasonable time. The clerk shall give at least 5 working days' formal notice of the date, time and location of the appeal hearing to all the participants (see model letter). All documents relevant to an appeal hearing shall be enclosed with the letter. The teacher may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the teacher or the teacher's trade union representative, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date.

9.4 The witnesses may include, as appropriate to the circumstances of the case, the headteacher and/or a member of the committee which took the decision against which the teacher is appealing, or the person who presented the case if that person was not the headteacher.

9.5 The order of proceedings for an appeal hearing will follow the procedure recommended

by the local authority. The appeal committee will have regard to any guidance issued from time to time by the local authority on conducting an appeal hearing.

9.6 The appeal committee may dismiss the appeal, uphold the appeal, amend the period defined for further improvement, or substitute a defined period for further improvement for a determination that the teacher should cease to work at the school or a dismissal from the school.

9.7 The teacher may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. Any oral announcement shall be confirmed in writing by the clerk to the governing body within 5 working days of the appeal hearing. If an appeal against a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school is upheld, the letter of notification will state that the local authority will be notified immediately so that it can withdraw the letter of dismissal and reinstate the teacher without a break in service. If an appeal against dismissal from a voluntary aided or foundation school is upheld, the letter of notification will include a withdrawal of the dismissal and reinstatement without a break in service.

10.0 Headteachers

10.1 In the event of concerns arising about the capability of a headteacher (as defined in 2.3 above) the chair of the governing body will refer them to the Director of Education for action in accordance with these procedures. Simultaneously the chair of the governing body will inform the headteacher that such action is being taken.

10.2 The Director of Education will arrange for the concerns to be investigated and if the conclusion is that there are no concerns or concerns which are more appropriately addressed outside this procedure, the Director of Education will notify the chair of the governing body and the headteacher in writing.

10.3 If the concerns are serious, the Director of Education will also make a written report to the chair of the governing body and at the same time send a copy to the headteacher as required by the School Staffing Regulations 2009. The chair of the governing body will then arrange for proceedings to take place under Sections 4 and 5 of these procedures as appropriate, with capability meetings under Section 4 being conducted by a representative of the Director of Education at the request of the chair of the governing body.

10.4 Where the Director of Education believes the education of children is likely to be seriously jeopardised then they may proceed under Section 8 of this procedure.

10.5 The Director of Education will act in relation to the headteacher as the headteacher

acts in relation to any other teacher.

10.6 The Director of Education will report back to the governing body through the chair at each stage of the procedure, although there shall be no report on the detail of the concerns.

11.0 Exceptional Circumstances

11.1 In extreme cases the headteacher shall write to the teacher explaining that they consider that this is an extreme case in which the education of pupils is seriously jeopardised, setting out the evidence supporting this allegation, and inviting the teacher to a meeting, at which the teacher may be accompanied by a trade union representative or a workplace colleague. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this Section of the procedure. Copies of any documentation to be used at the meeting shall be sent with the written notice. In order to ensure that the teacher has enough time to prepare their response to the concern(s) reasonable notice of the meeting should be given. This should be at least 5 working days. It is advisable to agree a date with the teacher's trade union representative before sending the formal instruction to attend the meeting.

11.2 The purpose of the meeting shall be: -

(a) to define the aspects of capability which lead the headteacher to allege that the education of pupils is jeopardised and why it is not appropriate to use or continue to use the procedure set out in Section 4;

(b) to allow the teacher and/or the teacher's trade union representative to
comment and/or offer an explanation;

(c) for the headteacher to decide, having regard to (a) and (b), above whether to confirm or withdraw the allegation(s) of lack of capability which seriously jeopardises the education of the pupils;

(d) for the headteacher, in the light of (c) above, to take one of the following options

- take no further action under this section of the procedure;
- start capability meetings at the second meeting, thereby omitting the first meeting under Section 4. Under such circumstances the teacher must be informed of the reasons for taking such action.

Under (d) above the headteacher may decide to arrange for direct supervision of the
teacher's work for a specified period during the review period.

11.3 A copy of the notes of the meeting shall be sent to the teacher within two working days
of the meeting together with a copy for the teacher's trade union representative.

11.4 The head teacher should arrange for a review meeting to be held weekly during the review period. The dates of these meetings should be set in discussion with the teacher and their trade union representative.

12.0 Suspension

12.1 Under the School Staffing Regulations the governing body and the headteacher of a school with a delegated budget both have the power to suspend any person employed to work at the school where, in the opinion of the governing body, or, as the case may be, of the head teacher, the exclusion of that person from the school is required. It is not expected that the headteacher or governing body will exercise this power under the capability procedure, which is intended to support teachers in achieving the required standards and give them the opportunity to demonstrate the required improvement. Advice on suspension for any reason should be taken from their chosen Employee Relations Team.