



# RUDGWICK PRIMARY SCHOOL

## Capability Policy

Inspire - Believe - Achieve



### Our Mission:

At Rudgwick Primary School, our mission is to provide a happy, fun, safe place, where kindness shines through and where:

- Excellent teaching and a wide range of experiences **inspires** a love for learning and a curious mind;
- Everyone is valued and respected and feel that they belong;
- Individual strengths and talents are nurtured and celebrated and children **believe** in themselves and, through strong friendships, each other;
- A growth mind set is encouraged, mistakes are seen as learning opportunities and confident, resilient learners grow;
- Children are successful learners who, through both independence and collaboration, can make progress and **achieve** to their full potential.

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**Review and approval by:** FGB

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**Frequency or review:** 2 years

# Model Capability Policy

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**Note:** This document includes sections of text where input is required from the school. *These sections are in italics and highlighted in turquoise.*

## **Model policy for dealing with capability issues**

*The Governing Body of [ENTER NAME OF SCHOOL] School adopted this policy on DD/MM/YYYY and reviewed it on DD/MM/YYYY.*

### 1. Purpose Of This Policy

This policy sets out the arrangements that will apply in serious cases where there have been persistent failures to meet job expectations, resulting in negative consequences on pupils and the organisation. This procedure applies only to employees (teachers, school leaders, and support staff) where there is a capability issue that the school's appraisal process, including any informal support arrangements, have been unable to address.

### 2. Aim

The aim of this policy is to provide a framework for managing employees, who despite the help and support provided through the Appraisal Policy/regular feedback meetings are unable to demonstrate the required level of performance or behaviours in their role.

### 3. Who Can Help?

For advice on capability issues, headteachers / line managers with queries and to get support can contact their named HR Advisor or HR Business Partner in the HR Business Partner Education Team. Alternatively, contact the team as follows:

- Telephone: 033022 22422
- Email: [HR.Professional.Support@westsussex.gov.uk](mailto:HR.Professional.Support@westsussex.gov.uk)

## 4. Scope

This policy covers all staff employed by the school and Centrally Employed Teachers with the exception of:

- Those employed for less than one term.
- Support staff in their probationary period.

Certain procedural variations apply to the Headteacher and Centrally Employed Teachers as detailed below.

**Note** – in this document use of the word ‘teachers’ should generally be read to mean all teachers including the headteacher and members of the school’s leadership group.

### **Headteachers**

Meetings will be conducted/chaired by a member of the Governing Body who may be supported by a senior colleague from the Education & Skills Directorate representing the Director.

### **Centrally Employed Teachers**

Meetings will be conducted/chaired by the line manager or senior line manager. Appeals against notices to improve must be submitted to the employee’s line manager and will be heard by a manager of equal or greater seniority within the directorate.

Centrally Employed Teachers have the right of appeal against dismissal to the Staff Appeals Panel and the timescales/arrangements applicable to that panel will apply instead of the provisions within this policy.

For teachers there are certain legislative requirements, which must be adhered to, where this is the case this is shown in **bold**.

### **Academies (where the WSCC Model Policy has been adopted)**

For some academies, staffing matters are the responsibility of the Board of Trustees. Where this is the case the terms “board of governors/governing body” or “governors” should be read as “board of trustees” or “trustees” throughout this policy.

## 5. When To Use The Capability Procedure

Early intervention is critical when dealing with poor performance and therefore, notification of a formal capability meeting should never come as a surprise to the employee concerned.

The Headteacher/Line Manager is expected to raise concerns with individuals about their performance, through feedback, at the earliest possible opportunity and to put in place supportive interventions to help support the employee reach the required standards/behaviours. Informal support and a performance improvement plan should mean that the employee is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment.

For support staff it is recognised that they may not be subject to the full appraisal process, but their performance should be managed, with concerns about performance being raised informally first through normal regular feedback meetings.

The capability procedure set out in this policy will be instigated when, despite the help and supportive interventions provided through the Appraisal Policy or through normal regular feedback meetings, the employee is still unable to meet the required standards and has **been formally notified that the Appraisal Policy/normal regular feedback meetings will no longer apply.**

The capability procedure may also be instigated when there are serious concerns about an employee's performance and immediate action is warranted.

In cases where the employee does not reach and maintain the required standard of performance, they may be dismissed.

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 matter under the school's Disciplinary Policy.

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

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 employee 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 employee of their right to be accompanied by a work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed.

**Note:** while a teacher or school leader is in capability procedures, pay progression should be withheld.

## **6. The Formal Capability Procedure - Overview**

Prior to commencing the formal procedure, the employee will have been **notified in writing that their performance is to be managed under the formal capability policy and that the appraisal policy no longer applies.**

The formal capability procedure consists of three stages as summarised in the table below:

<b>Stage</b>	<b>Purpose.</b>	<b>Outcomes</b>	<b>Meeting Chaired by</b>
Stage 1 - Formal Capability Meeting	To formally discuss the shortfall in the employee's performance and make clear the required standards, set objectives and timescales for improvement.	Written notice to improve  OR  No action is necessary and returns to normal appraisal policy/normal regular feedback.	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.	Final Written notice to improve.  OR  Extended monitoring period is given  OR  Employee has improved and formal capability procedures are discontinued and returns to appraisal policy/ normal regular feedback.	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.	Dismissal with notice.  OR  Employee has improved and formal capability procedures are discontinued.	Headteacher/ panel of no fewer than 3 governors.

These stages would normally be followed sequentially. However, there are certain circumstances where it would be appropriate to initiate the capability policy at a later stage, this includes:

- Where a notice of improvement is still 'active' and the employees' performance lapses during this period; OR
- Where there is a significant or sudden drop in performance that jeopardises the education of children, their safety or significantly compromises the operations, functions and services provided by the school.

In cases where it is not clear where the procedure should commence, advice should be sought from the HR Professional Support Team.

More detailed information about the three stages of the capability procedure is provided in the section below.

## 7. The Formal Capability Procedure – Logistics and Practicalities

### **Notice Of Meetings**

Where possible the date of the Formal Review Meeting (Stage 2) and Final Review Meeting (Stage 3) should be set in advance, but in any case at least 5 working days written notice should be given of attendance at any formal meeting under the procedure.

The notice of the meeting must contain sufficient information about the concerns, and their possible consequences to enable the employee to prepare their response.

### **Postponements**

A postponement may be requested in advance of the meeting and providing the reasons for the request are reasonable this will be agreed to. Only one postponement will be allowed.

In the event that the employee fails to attend the meeting or chooses not to attend the meeting, the matter may be considered and decided in their absence.

### **Document Exchange**

Any documentation to be considered at any formal meeting must be sent to the employee with the invitation to attend the meeting.

If the employee wishes to submit documentation to be considered this should be submitted no later than 3 working days prior to the meeting.

### **Witnesses**

In certain circumstances it may be appropriate for the Headteacher/Line Manager, or the employee to call witnesses to attend the hearing. Where this is the case, the Headteacher/Line Manager shall notify the names of the witnesses they intend to call in the invitation to attend the meeting. Where the employee wishes to call their own witness the name of the witnesses should be notified in writing no later than 3 days before the meeting.

### **Formal Confirmation Of Decisions**

The formal decision of the meeting and a copy of the notes of the meeting must be confirmed in writing to the employee within 5 working days of the meeting being held (see below for special provisions relating to dismissal).

### **Monitoring Periods**

The length of a monitoring period depends on the seriousness of the issue, but is expected in most cases, to be between 4 to 8 weeks per monitoring period, with the aim of completing the procedure, within a term of commencing the process.

### **Currency Of Notice To Improve**

If, at the end of their monitoring period, the employee has achieved the required standard, formal capability procedures will be discontinued and the employee will return to the normal appraisal process. The employee should be notified formally in writing of this.

However, the notice to improve will remain 'live' for a period of 9 calendar months (written notice to improve) or 12 calendar months (final notice to improve) or to the end of the academic year (whichever is the greater period) commencing from the date of the meeting, which confirms that formal procedures no longer apply.

Should the employee's performance lapse during this period they will return to the capability procedure at the stage they left it.

### **Dismissal**

Final Review and Decision Meetings (Stage 3), where dismissal may be the outcome, must be conducted in accordance with the procedure outlined in this policy document (this does not apply to Centrally Employed Teachers).

In Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, the decision to dismiss is delegated to the Headteacher and Governing Body but must be confirmed by the Local Authority. Where an employee is dismissed from such a school, they will be formally notified within 5 working days of the Headteacher/Governing Body's recommendation. This will be followed by a formal notice of dismissal from the Local Authority within 14 days of receipt of the recommendation for dismissal.

In Foundation, Voluntary Aided, Foundation Special Schools and some Academies, the Governing Body shall issue the notice of dismissal, within 5 working days of the decision being made. This will be confirmation of the employee's dismissal.

Centrally Employed Teachers will be issued with notice of dismissal by the Local Authority, within 5 working days of the decision being made. This will be confirmation of the employee's dismissal.

## **Appeals**

There is the right of appeal at all three stages of the formal capability procedure set out in this policy document.

In the case of dismissal, the employee has the right to appeal against any such dismissal to an Appeals Panel of no fewer than three governors representing the Governing Body of the school.

Employees wishing to appeal against a notice to improve or dismissal, must submit their appeal in writing, stating the grounds for their appeal, within 5 working days of receiving written confirmation of the decision to the Clerk to the Governing Body.

The Clerk to the Governing Body will make arrangements for the appeal meeting to be held within 10 working days of receiving the employee's letter.

The Appeals Panel cannot increase the level of the notice to improve.

### **Right to be Accompanied**

Employees have the right to be accompanied at all formal meetings within the capability procedure. This person is sometimes referred to as the companion. There is no right for the employee to be accompanied to regular meetings during review periods.

The employee's companion can be:

- A work colleague.
- A Trade Union Official.
- An accredited Trade Union Representative.

The name of the companion attending any formal meeting should be notified to the Headteacher/Line Manager, no later than 3 working days prior to the formal meeting.

## **8. The Formal Capability Procedure – Detailed Information**

### **Stage 1 - Formal Capability Meeting**

This meeting is intended to establish the facts. It will be conducted by the Chair of the Governing Body (for headteacher capability meetings) or headteacher/other suitable senior member of the school's staff (for other employees e.g., teachers or members of the Support Staff) **(schools to insert any alternative arrangements).**

The meeting sets out the required standards which are believed to have been failed by the employee. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations, with the option of being accompanied by a work colleague, union representative or an official employed by a trade union.



This may provide new information or a different context to the information/evidence already collected. During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary.

The employee shall be allowed to ask questions, present their own evidence, and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.

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 employee's professional shortcomings (for example, for teachers which of the standards expected are not being met).
- 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).
- Explain any support that will be available to help the employee improve their performance; set out the timetable for improvement taking into account the employee's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case but in straightforward cases could be *(insert reasonable time period. It is for the school to fairly determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place).*
- Explain how performance will be monitored and reviewed. Warn the employee formally that failure to improve within the set period could ultimately lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee 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**

A performance monitoring and review period will follow the Formal Capability Meeting (Stage 1). Formal monitoring, evaluation, guidance, and support will continue during this period. The employee will be invited to a Formal Review Meeting (Stage 2), unless they have already been issued with a final written warning, in which case they will be invited to a Decision Meeting (Stage 3).

### **Stage 2 - Formal 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 work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (for example a date that is within five working days of the original proposed date).

If the person conducting the meeting is satisfied that the employee 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 employee will receive a final written warning which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards.

As before, notes will be taken of formal meetings and a copy sent to the employee.

The final written warning wording will mirror any previous warnings that have been issued. Where a final 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 further monitoring and review period and the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

### **Stage 3 – Final Review and Decision Meeting**

As with formal capability meetings and formal 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 employee of their right to be accompanied by a work 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 (if in regard to a teacher or member of the Support Staff), or recommendation to the Governing Body (in regards to a headteacher), will be made that the final written warning should be extended (where possible or appropriate), or the employee should be dismissed or required to cease working at the school. Redeployment into an alternative role may be considered where appropriate and possible.

**Note:** In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the Governing Body is the employer but the power to dismiss can be delegated to the headteacher, to one or more governors, or to one or more governors acting with the headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the employee 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) who acts on the decision and issues notice to the employee (or – for those who work in more than one school – requires them to cease to work at the school).

Before a decision to dismiss is made, the school will discuss the matter with the Local Authority. For maintained schools the Local Authority may attend and offer advice at all proceedings relating to the dismissal of any employee, and the Governing Body must consider any such advice.

The employee 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**

EITHER: The power to dismiss employees in this school rests with the Governing Body.

OR: The power to dismiss employees in this school has been delegated to the headteacher / or to one or more governors/to one or more governors acting with the headteacher.

*(Schools should delete one of the paragraphs above as appropriate).*

### **Dismissal**

EITHER: Once the decision to dismiss has been taken, the Governing Body *(or insert details of person or people to whom the power to dismiss has been delegated)* will dismiss the employee. Usually this will be with notice or pay in lieu of notice.

OR: "Once the Governing Body" *(or insert details of person or people to whom the power has been delegated)* has decided that the employee should no longer work at the school, it will notify the Local Authority in writing of its decision and the reasons for it. Where employees work solely at this school, the Local Authority must dismiss them with notice within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school".

*(Schools should delete one of the paragraphs above as appropriate).*

### **Appeals**

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 work colleague will apply as with the Formal Capability and Review Meetings and, as with other formal meetings, notes will be taken, and a copy sent to the employee. The appeal will be dealt with impartially and by managers or governors who have not previously been involved in the case. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

## **9. General Provisions**

### **Overlapping Procedures**

In certain circumstances an employee may have a difficulty that is covered by two policies (for example, Grievance); or another difficulty arises during the application of one policy (e.g. sickness absence). 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.

Sickness absence or grievances will not necessarily mean the capability procedure set out in this Capability Policy is suspended, each individual case will be examined on its merits and timescales may be amended accordingly.

Human Resources can provide advice in these circumstances.

### **Link with Incremental Pay (Non-Teaching staff only)**

The pay policy states that employees will usually progress to the next spinal column point on an annual basis, subject to their performance, until they reach the top of the pay spine. If an employee is given a notice to improve their Line Manager may authorise for the employee's increment to be withheld until the notice to improve has lapsed. If this is to be actioned, the employee will be told in writing.

### **Trade Union Representatives**

No formal action will be taken under this policy 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.

In the case of any formal meeting, any reasonable adjustments should be notified as soon as possible (and providing a minimum 3 working days' notice).

## **10. General Principles Underlying This Policy**

ACAS Code of Practice on Disciplinary and Grievance Procedures

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and Governing Body to quality-assure the operation and effectiveness of the appraisal system. *(Schools to say here how they might achieve this, for example, the headteacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The headteacher might also wish to be aware of any pay recommendations that have been made).*

### **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 employees. The Governing Body is aware of the guidance on the Equality Act 2010 issued by the Department for Education. References "If a teacher has been subject to formal capability procedures in the previous two years", as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and employment advice for schools, "this must be disclosed to new potential school employers when requested".

### **Definitions**

Unless indicated otherwise, all references to "teacher" include the headteacher. This policy document refers to employees of the school which encompasses teachers, the headteacher, members of the school's leadership team/group, and support staff. This policy document also refers to 'the Governing Body' and 'governors', some schools may use 'governing board'. Academies may use the term 'trustees'.

## **Delegation**

Normal rules apply in respect of the delegation of functions by Governing Bodies, headteachers 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, including as part of the capability process, 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 performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy (e.g. 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 monitoring and/or formal procedures to continue during a period of sickness absence.

## **Monitoring and Evaluation**

The Governing Body and headteacher will monitor the operation and effectiveness of the school's Capability Policy. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

## **Retention**

The Governing Body and headteacher will ensure that all written capability records are retained and stored in a secure place in line with their Retention and Disposal Policy

## **11. Document History**

This policy originally came into force from 1 September 2012 and was developed in response to the "Teacher Appraisal and Capability Model Policy for Schools" dated January 2012 and issued by the Department for Education and "Teachers' Standards" effective from 1 September 2012. This policy was subsequently amended to complement the revisions to the Model Pay Policy in the light of the changes to the STPCD from September 2013. Changes made since then are listed below.

Updated by:	HR Policy & Practice Team (JG)
Issued:	March 2017
Reviewed:	March 2020 NH SHRS (updated HR contacts)
Sense checked:	May 2020 KMG SHRS
Updated by:	27/09/2024 TO 18/10/2024 DOCUMENT UPDATED BY KMG HR POLICY TEAM FOR 2024 STPCD CHANGES AND TO 'TIGHTEN' ALIGNMENT OF DOCUMENT'S WORDING TO THE MODEL DfE CAPABILITY POLICY. DOCUMENT FINALISED 25/10/2024.

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