Capability Policy

Dormers Wells Primary School

Believe Aspire Flourish

Diversity, Opportunity, Resilience, Moral values, Excellence, Respect, Self-Belief

Last reviewed, ratified and adopted by the Full Governing Body	October 2025
Next review due by	October 2026

This policy will be reviewed every year.

The Governing Body of Dormers Wells Primary School adopted this policy following consultation with the recognised teaching unions. The policy aims to comply with the prevailing legislative framework and best practice.

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1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

2. Legislation and guidance

Under statutory regulations, appraisal arrangements for all teachers in maintained schools in England were changed from 1 September 2013.

This policy is based on:

- The School Staffing (England) Regulations 2009 (regulation 8)
- The School Staffing (England) (Amendment) Regulations 2012
- The Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations)

This policy is based on the Department for Education's model policy and guidance, and the Acas code of practice on disciplinary and grievance procedures.

When carrying out capability procedures, we will ensure we abide by the Equality Act 2010.

This policy also complies with our funding agreement and articles of association.

The 2012 regulations apply to any teacher employed for one school term or more, in a community, voluntary, foundation, community special or foundation special school or a maintained nursery school, whether employed by the governing body of that school or by the local authority to work in that school.

The regulations place a legal obligation on qualifying schools to have capability procedure in place for all staff.

The regulations do not apply to a teacher whilst that teacher is undergoing an induction period or whilst a teacher is the subject of a formal capability procedure.

3. Definition

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to **'staff'** include the headteacher, teachers and support staff, unless indicated otherwise.

4. Roles & Responsibilities-Management guidance: applying the procedures

Where the member of staff subject to the procedure is the headteacher, the chair of governors will be responsible for co-ordinating the procedure.
Where the member of staff subject to the procedure is not the headteacher, the headteacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.
Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

Role of governors

Governors should not normally be involved with a capability procedure before the dismissal stage unless the head teacher is the subject of the capability procedure.

Role of the head teacher

The head teacher will be responsible for taking the decision to invoke the capability procedure, unless of course, they are the subject of the procedure.

Role of advisers

Local authority and other advisers may be invited to participate in the capability procedure or with the monitoring process or with providing support.

Staff, especially teachers, experiencing difficulties

When a member of staff is experiencing difficulties, support and guidance will be provided through the appraisal process. Where it is clear that a member of staff's personal circumstances are leading to difficulties at work, appropriate support should be offered at the earliest opportunity.

If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be referred to the occupational health service who will assess the member of staff's health and fitness for continued employment and whether either continuing with informal monitoring or formal procedures is deemed to be appropriate.

If the appraiser identifies through the appraisal process or through other sources of information, parental complaints for example, that the difficulties experienced by a teacher are such that, if not rectified could lead to the capability procedure, the appraiser will, as part of the appraisal process, meet the member of staff to:

- give clear written feedback to the teacher about the nature and seriousness of the concerns;
- give the teacher the opportunity to comment on and discuss the concerns;
- give the teacher at least five working days' notice that a meeting will be held to discuss targets for improvement alongside a programme of support and remind the teacher that they have the right to be accompanied by a work colleague or trade union representative at any future meetings where capability will be discussed;
- agree and establish, in consultation with the teacher, an action plan with support that will help to remedy specific concerns;
- make clear, how progress will be monitored and when it will be reviewed; and
- explain the implications and process if no, or insufficient, improvement is made.

The teacher's progress will continue to be monitored as part of the appraisal process and a reasonable time given for the teacher's performance to improve. During this monitoring period, the teacher will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate.

If sufficient progress is made, the teacher should be informed of this at a formal meeting and the appraisal process will continue as normal.

If no, or insufficient improvement has been made, the teacher will be invited to a transition meeting to determine whether formal capability proceedings will be invoked.

As a final check and balance to invoking the capability procedure, it is advised that line managers ensure that the following have been put in place:

- The employee has undergone an appropriate period of induction to their role
- An up to date job description has been issued to the employee
- Professional standards and overall expectations of performance have been made clear
- The employee's performance has been monitored and feedback has been provided

Transition to capability

Performance concerns should be dealt with through the staff appraisal policy but if progress towards addressing performance concerns is insufficient or the concerns are sufficiently serious, a 'transition meeting' should be held; the expectation is that this meeting will reduce the likelihood of invoking the capability procedure or triggering a

prolonged period of sickness absence. In this event, further support should be granted through the appraisal procedure.

A meeting of this nature does not amount to part of the formal capability procedure.

The employee, their line manager and the head teacher (or chair of governors where the capability of the head teacher is in question) will be present at the meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a work colleague or a trade union representative.

Guiding principles to the overall approach to the meeting:

- Ensure that practical support, advice and guidance is provided to the employee
- Training should be provided where this is a reasonable expectation
- Performance criteria should be clear and monitored within agreed time schedules
- The employee's shortcomings are clearly set out in writing

The meeting will consider the following matters:

- The evidence that has given rise to the specific concerns about the employee's performance
- The seriousness of the concerns and their impact on the performance of the school
- The support that has been provided to date
- The time for which the concerns have persisted
- The degree of improvement that has been achieved and whether or not this has been sustained
- The extent to which the employee has shown insight and has engaged with the support provided throughout the appraisal process
- Any mitigating factors

Once these matters have been considered, the chair should close the meeting and reflect on the findings, take advice and reach a decision. The employee will be informed of the decision in writing and normally within five working days. The decision will be either to continue with the appraisal process or to invoke the capability procedure by convening a formal capability meeting.

The transition to the capability procedure will not normally be made unless there is evidence that:

- under-performance against agreed objectives and / or standards has prevailed for some time; and
- the underperformance is either serious or has persisted despite the provision of support.

5. Capability procedure

Performance is monitored on a day-to-day basis by line managers, e.g. *regular one-to-ones.*

Formal capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered. Evidence of this will be available before the process begins.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

The principal purpose of a capability procedure is to support and ensure that staff can perform their duties and to deal with under-performance on a formal basis. The aim is to deal with those cases, where, despite appropriate management support (normally provided through the appraisal process), a member of staff is deficient in key areas of ability, skill, competence or knowledge and is consequently unable to carry out their required duties to an acceptable standard.

It is important that under-performance is managed to ensure that the quality of teaching and learning is unaffected and that the overall performance of the school is not compromised. The overall approach to capability should be supportive, constructive and helpful to the employee.

This procedure complies with the provisions of the ACAS code of practice.

The capability procedure applies only to teachers and head teachers where there are serious concerns about their performance that are not able to be addressed by the appraisal procedure. The purpose of a capability meeting is to establish the facts and will usually be chaired by either the chair of governors or the head teacher. The subject of the capability meeting will be able to respond to concerns about their performance and to present any relevant evidence.

Employees should be made aware that whilst they are and remain the subject of the capability procedure; the normal appraisal arrangements will be suspended. Employees are expected to cooperate constructively with arrangements that are put in place to address under-performance. Where an employee believes that they are being unfairly treated, they may raise an informal complaint or a formal grievance as appropriate.

As is the case in all formal procedures, the chair of each meeting should ensure that clear written records are kept, in particular, the management concerns about the employee's performance.

Timescales

Under the procedure, timescales may be adjusted as appropriate:

- this model procedure proposes a period of between four and ten weeks for the implementation of the informal stage where a member of staff is typically supported by a support plan or what may also be known as an action plan. The agreed period may be adjusted to suit the merits and circumstances in each individual case; for example, you would expect an experienced teacher or other member of staff to make improvements in a short period of time whereas you may wish to grant a longer period of time to an employee at early career stage
- In particularly serious cases where the education, health or wellbeing of pupils may be at risk, a shorter period for monitoring is, in all likelihood, going to be more appropriate (e.g. where a teacher's control of the class is poor or where pupil progress is inadequate, despite support)
- If the implementation of the capability procedure triggers an episode of sickness absence, the case should be immediately referred to the school's occupational health service to assess the employee's health and fitness for continued employment; the length of time a school should wait for an employee's health to improve before considering whether to terminate the employment on health grounds should be subject to ongoing occupational health guidance

5.1 Formal capability meeting

Notification of a formal capability meeting commences the formal process, and will be supported by previous informal support to improve their performance. The first meeting under the capability procedure, often referred to as the formal interview, initiates the capability procedure.

The staff member will receive at least 5 working days' notice of the formal capability meeting. The notification will contain:

- The concerns about performance and possible consequences to enable the teacher to prepare to present their case at the meeting.
- Any written evidence
- The time and place of the meeting

That the staff member has the right to be accompanied by a work colleague or trade union representative The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.
The formal capability meeting will be conducted by the chair of governors for headteachers, and a member of the senior leadership team for other teachers.
The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

The chair of the capability meeting will aim to

- identify the teacher's professional shortcomings;
- give clear guidance on the improved standard of performance needed;
- explain any support that will be available to help the teacher improve to a point where they can be removed from the capability procedure;
- set out the timetable for improvement and explain how performance will be monitored and reviewed; and
- warn the teacher formally that failure to improve within the set period could lead to dismissal (in very serious cases, the warning could be a final written warning).

Notes will be taken of the formal meeting and a copy sent to the member of staff.

5.1.1 Possible outcomes
There are three possible outcomes from the formal capability meeting:

- A return to the appraisal process, where it is determined that there is insufficient evidence to progress the matter further within the capability procedure
- A first written warning
- A final written warning

Options two and three are relevant to any case where continued concern/s about the standards of performance is justified. The level of warning should be determined by the seriousness of the concerns that relate to the performance of the teacher or other member of staff. Lower level concerns are likely to lead to a first written warning and a period of up to 6 - 8 weeks may be granted for improvement; conversely, higher level concerns would normally lead to a final written warning and a shorter monitoring period of no more than four weeks.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision and will normally be heard with a period of ten working days, unless alternative timescales are agreed between the parties to the dispute.

5.2 Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. This period will include regular task/classroom observation, performance evaluation and monitoring, training, management support and guidance.

5.3 Formal review meeting

Following the conclusion of a monitoring and review period, the member of staff will be invited to a formal review meeting.

At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

At the formal review meeting, if the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.

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 staff member will receive a final written warning

Notes will be taken of formal meetings and a copy sent to the member of staff.

The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. A further monitoring period will be set and a subsequent and final review meeting will be scheduled. The staff member will be invited to a decision meeting.

If, following a final written warning, performance does not improve to an acceptable standard; the case will be referred to an appropriate panel of governors, typically three governors.

5.4 Decision meeting

At the decision meeting, if an acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end and the appraisal process will re-start.

If performance remains unsatisfactory (i.e. where sufficient improvement cannot be achieved despite comprehensive support or where performance concerns are of particular gravity), a decision, or recommendation to the governing body, will be made that the teacher should be dismissed or required to cease working at the school as soon as possible (consulting the local authority in those schools where the Local Authority is the teacher's employer).

5.5 Dismissal

Once the decision to dismiss has been taken, the governing body will dismiss the teacher with notice or once the governing body has decided that the teacher should no longer work at the school, it will notify the local authority of its decision and the reasons for it. The local authority must dismiss the teacher within 14 days of the date of the notification.

6. Appeal

If a teacher feels that the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision, setting out the grounds of the appeal. The teacher will be informed in writing of the results of the appeal hearing without unreasonable delay.

The appeals panel should be made up of three impartial governors who have had no involvement or have no knowledge of the case in which the appeal has been brought.

The decision of the appeals panel is final.

Written records

Formal warnings should be disregarded after a specified period of satisfactory performance.

First written warning - 12 months

Final written warning - 24 months

Employee representation

If the employee's chosen companion is not available at the time proposed for the interview, meeting or hearing and the employee proposes an alternative date and time that is reasonable and falls within 5 working days of the original date, this should be given careful consideration and advice should be sought to ensure that revised arrangements can be made.

Grievances

Where an employee raises a grievance that relates to the capability procedure and its management and/or implementation, it may be appropriate to suspend the capability procedure until the grievance can be considered but such a delay should only be considered where there is a strong indication that the employee has been mistreated.

7. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality assure the operation and effectiveness of the system.

8. Consistency of fairness and treatment

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

9. Monitoring arrangements

Any monitoring undertaken should be across the range of principal job responsibilities so that a balanced view can be reached to support the evaluation of performance.

The effectiveness of this policy will be monitored by the headteacher and governing board.
This policy will be reviewed yearly but can be revised as needed.
This policy will be approved by the full Governing Body.

10. Links with other policies

This policy links to our policies on:

- Staff code of conduct policy
- Teachers' appraisal
- Staff grievance policy
- Staff disciplinary policy
- Equality information and objectives
- Early career teacher induction

Appendix 1: Capability Action Plan template

This template can be used as part of the process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

Name of staff member	Name of Appraiser	Date of meeting

Objective 1:		
Professional standard(s) that the objective relates to	**Success criteria**	**Evidence to be used to assess progress**
Support/resources to be provided	**Monitoring arrangements**	**Review date**

Objective 2:		
Professional standard(s) that the objective relates to	**Success criteria**	**Evidence to be used to assess progress**
Support/resources to be provided	**Monitoring arrangements**	**Review date**

Objective 3:		
Professional standard(s) that the objective relates to	**Success criteria**	**Evidence to be used to assess progress**
Support/resources to be provided	**Monitoring arrangements**	**Review date**

Other support provided

Mentor/coach allocated	Yes/No (If yes give name)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

Signed by member of staff	**Signed by appraiser**	**Date**