The Parkside School
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Capability procedure - teaching staff

Approved by:	Mrs C Ellis-Gage Headteacher	**Date:** May 2026
Signed:		
Next review :	May 2026 Mrs C Ellis-Gage Headteacher	

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1. Introduction and scope

1.1 This procedure reflects the ACAS Code of Practice on disciplinary and grievance procedures. It applies only to those teachers and Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

1.2 Early low level concerns about performance should be managed through the appraisal process, as set out in the Education (School Teachers' Appraisal (England) Regulations 2012 (The Appraisal Regulations).

1.3 Early Career Teachers (ECTs) would normally have poor performance addressed as part of their induction year arrangements and the statutory guidance on Induction for ECTs in England covers this. The statutory guidance on induction does, however, give schools the option of using the (local) capability procedure which may lead to dismissal before the end of the induction period. The statutory guidance details the actions that need to take place before the capability procedure is used for ECTs.

1.4 Where the performance of the Headteacher is the focus of this procedure, all references to "Headteacher" in the text should be read "Chair of Governors or other nominated governor with advice and support from the Executive Director of Children's Services or her representatives". At all stages in the process, the Chair of Governors should work with, and take advice from, the appointed representative(s) of the Executive Director of Children's Services.

2 Equalities and support

2.1 The Headteacher will ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

2.2 Through the implementation of this procedure, the Governing Board will be mindful of their obligation to seek to maintain and protect the mental health and wellbeing of all employees as far as is reasonably practicable.

2.4 According to ACAS it is estimated one in seven people are neurodivergent, meaning that the brain functions, learns and processes information uniquely. Where an employee discloses neurodiversity, the Governing Board understands the employee may require extra support in relation to the application of this policy. Where reasonable adjustments are necessary and can be accommodated, the Headteacher will support these.

2.5 Throughout this procedure reference to companion means trade union representative or work colleague and through the formal procedure, the right exists for the employee to be supported in that way. Where an employee discloses a mental health issue which could be a disability, efforts will be made to seek to agree with the employee and reasonable adjustments to the procedure. This could include allowing the employee to be supported by an individual who does not meet the statutory definition of a companion but does understand the individual's condition and its effects, and/or; having regular breaks during longer grievance meetings, and/or; holding the meeting at a neutral venue.

2.6 The Governing Board expect all employees to adhere to this policy in line with obligations under equality legislation.

3 Authority to act

Strategy consideration –

Under the School Staffing (England) Regulations 2009, the Governing Board may delegate responsibility for dismissal of employees to the Headteacher, one or more governors, or one or more governors acting together with the Headteacher. Although the authority to dismiss can be delegated to the Headteacher, they are primarily responsible for taking employees through the process until a decision on dismissal has to be made. It would therefore not be appropriate for the Headteacher to also make the decision regarding dismissal in capability cases. Schools are advised against delegating dismissal decisions to individual governors.

In Foundation schools, Voluntary Aided Schools and Foundation Special Schools the Governing Board 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 or 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, that actually dismisses staff. The Local Authority will do this within fourteen days of the date of the notification.

Clarity on delegation of the power to dismiss on grounds of lack of capability will need to exist before this formal procedure commences.

3.1 Option 1

[The Governing Board have taken the decision to delegate responsibility for dismissal of employees to the Headteacher.]

Or

Option 2

[The Governing Board have taken the decision to delegate responsibility for dismissal of employees to [number] of governor(s).]

Or

Option 3

[The Governing Board have taken the decision to delegate responsibility for dismissal of employees to [number] of governor(s), acting together with the Headteacher.]

3.2 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

4 Exclusions

4.1 Disciplinary procedures exist to deal with misconduct, wilfully deficient performance, refusal to follow instructions, negligence, and other similar situations, and will be used where such considerations form a significant part of any complaint.

4.2 The assessment and treatment of employees undergoing teacher induction will be dealt with according to the terms of their induction (or probationary) period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

4.3 Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

5 Covert recordings

5.1 The Governing Board believes that the covert recordings (audio and video) of workplace meetings undermines trust between individuals.

5.2 The covert recording of any meetings or proceedings, including disciplinary and grievance hearings and appeals, by an employee potentially constitutes an act of gross misconduct. It features in the list of non-exhaustive acts of gross misconduct in the guidelines on conduct document. Without sufficient mitigation, the covert recording by an employee of colleagues in such a meeting may lead to the employee's summary dismissal.

5.3 Affected employees will be informed of this policy position before any disciplinary, grievance or capability meeting.

5.4 Similarly, no covert recording of the deliberations of a panel at the end of any hearing may be made. This would also potentially constitute an act of gross misconduct likely to lead to summary dismissal.

5.5 In some circumstances, it may be appropriate for a meeting to be recorded but in these cases, there must be written agreement between the manager leading the discussion and the affected employee. Consent will need to be

obtained by all persons who will be included in the recording. The parties will then be under an obligation to ensure that all recordings are processed, securely stored and used in a manner consistent with the Data Protection Act 2018.

6. Previous action to address concerns

6.1 Concerns about performance will initially be addressed as part of the appraisal process through which informal support and guidance will be used to help an employee reach the required standard. In those cases, this formal procedure would be used to address capability only when that support has been unsuccessful in bringing about required improvement. In some cases, where there are serious concerns about performance, or where the employee refuses to engage with the process, or to accept that there is a concern, the process for addressing lack of capability can be "fast tracked", so that it begins with the formal capability meeting.

7. Formal Capability Meeting

A formal capability meeting initiates the capability procedure. It provides an opportunity to deal with more serious problems in a structured way or to give more intensive support and monitoring where the support provided at the appraisal stage has failed to bring about the required improvement. It allows the employee to prepare a response to concerns about performance and make a case in the company of a companion. This may provide new information or a different context to the information/evidence already collected.

7.1 Invitation to the Formal Capability Meeting

The employee will be invited to the formal capability meeting with at least five working days' notice (or seven consecutive days out of term time). The invitation will be in writing and will contain sufficient information about the performance concerns and the possible consequences to enable the employee to prepare to answer the case at the formal meeting. It will also contain copies of any written evidence; the date, time and venue of the meeting, and will give details of others who will be in attendance (e.g. witnesses, HR Consultant). It will also advise the employee of the right to be accompanied by a companion.

Where the employee has notified management that they will be accompanied by a companion, the companion will be consulted on the date and time of the meeting, although the process should not be unduly delayed by the accessibility of the companion. The statutory guidance

suggests that the process should not be delayed by more than five days for the purposes of securing representation but there should be recognition of the difficulties associated with co-ordinating diaries.

A copy of this capability procedure will be included with the invitation along with a capability report prepared by the Headteacher. The report will include:

- a description of the problem(s),
- supporting evidence provided through the appraisal process (where appropriate) which identifies what the issues are, support offered so far, and what progress has been made,
- reference to and copies of, other evidence being used to confirm problems, e.g. reports of observations.

The invitation will be handed to the employee by the Headteacher or posted by recorded delivery. An extra copy of the invitation, report and other documentation will be provided to the employee for the purposes of passing to their companion. By agreement with the employee, the copy may be posted direct to their companion.

7.2 Conducting the Formal Capability Meeting

The meeting will be chaired by the Headteacher.

The format for the meeting will normally be as follows:

- The Headteacher introduces those present and confirms the purpose of the meeting.
- The Headteacher outlines the report and highlights the evidence for concerns, calling witnesses where appropriate. The Headteacher will refer to the report to identify the professional shortcomings, for example, giving details of which of the standards expected of teachers are not being met.
- Written evidence from witnesses will be provided to the employee in advance of the meeting .
- The employee (and/or their companion) may ask questions of the Headteacher and any witnesses.
- The Headteacher's adviser may ask questions.
- The employee (and/or their companion) will present their case and will be able to refer to written evidence and/or call on witnesses of their own. Prior notice must be given of any witnesses called or referred to, and any written evidence circulated before the review meeting.
- The Headteacher and their adviser can ask questions.
- The Headteacher may adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

- Where appropriate, the Headteacher and employee (and/or their companion) may summarise their cases.
- The Headteacher will adjourn the interview while they decide what action to take. The employee and their companion must be informed as soon as possible. In most cases, that will be immediately after the adjournment, and no later than five days after the review meeting.

7.3 Outcome of the Formal Capability Meeting

There are four possible outcomes from a formal capability meeting:

1. **The matter may be dropped** – this is only where new information, a different slant on the information collected or further investigation suggests the matter is not as serious as it first seemed.

2. The Headteacher may **extend the informal support** provided through the appraisal process. This will be appropriate in cases where the meeting has provided new information or put a different slant on evidence already collected. The Headteacher may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to address the remaining concerns through the appraisal process. In such cases, the capability process will come to an end.

3. In most other cases, the Headteacher will issue an **oral or formal first written warning** to the teacher, clearly stating that failure to improve within the set period could lead to dismissal.

- An oral warning should not normally be necessary in cases where counselling has already taken place.
- If performance is unsatisfactory, a first written warning will normally be the appropriate step (which will invoke an assessment period of up to ten weeks – see 7.4 below).

4. In very serious cases a **final written warning** could be issued. This would apply only to cases of particularly serious concern, where the education of children is in jeopardy. In such cases, it is possible to fast-track the process and move directly to a **final written warning** (which will invoke a period of monitoring and review not exceeding four weeks before final consideration of performance at a decision meeting.) In these extreme cases it will be important to consider (before a decision is made about issuing a final warning) how the employee's performance has dipped significantly if, for example, they have been successfully assessed against threshold criteria.

7.4 Action Plan

Where a formal warning is issued, the Headteacher will use the remainder of the meeting to agree an action plan to:

- identify the professional shortcomings, for example, giving details of which of the standards expected of teachers are not being met.
- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from the formal capability procedure (this may include the setting of new objectives focussed on the specific weaknesses that need to be addressed, and 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 teacher improve performance.
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case and should not normally be less than four weeks or more than ten.
- the Headteacher will agree a date for the next formal review meeting (or decision meeting if a final written warning has been issued) and make it clearly understood that failure to improve may ultimately lead to dismissal.

The approach taken should seek agreement on all aspects of the action plan but where agreement cannot be reached, the Headteacher will determine what is to be included, but will incorporate any comments the employee may wish to make.

A letter, along with the agreed action plan, will be sent to the employee immediately after the formal meeting. It will record the outcome, the main points discussed, confirm the decision and, where a warning is issued, give information about the handling of the formal stage and the appeals process. The letter must state that if there is insufficient improvement in the capabilities of the employee by the end of the stated period, this could lead to further action under the formal procedure including a final written warning, no pay progression or dismissal for lack of capability.

Strategy consideration – A template *Personal action plan F329* is available on InfoSpace.

8. Monitoring and review period following a formal capability meeting

8.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring evaluation, guidance and support will continue

during this period. It will include regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee. This will include the need for regular, perhaps weekly, feedback to the employee on their progress so they can be clear on whether they are making the improvements required. It would be helpful to the process if such regular feedback is through a written note detailing where improvement has been made, and where progress still needs to be made.

8.2 If at any point during this stage the circumstances suggest a more serious problem exists, the Headteacher may take the decision to bring forward the planned formal review meeting to consider whether a final written warning should be issued sooner. In these circumstances, if a final warning is issued, there will normally be a maximum period of four weeks allowed following that formal review meeting before a final decision meeting is held.

8.3 At the end of the monitoring and review period, the employee will be invited to a formal review meeting unless they have been issued with a final written warning, in which case they will be invited to a decision meeting.

9. Formal Review meeting

9.1 The formal review meeting will be convened by the Headteacher in the same way as the formal capability meeting, i.e. through invitation giving details of the time, date and place of the formal review meeting and the right to be accompanied by a companion. The invitation will be sent at least five working days (or seven consecutive days out of term time) in advance, and include a summary report detailing the following:

- the original action plan and written warning,
- details of help and guidance provided and results of monitoring,
- copies of evidence from observations and other relevant evidence,
- a clear assessment by the Headteacher of the progress made.

9.2 The format of the formal review meeting is the same as the formal capability meeting (paragraph 7). If the Headteacher is satisfied that the teacher has made sufficient improvement, the capability process 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, the monitoring and review period may be extended.

9.3 If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a **final written warning**. Formal monitoring, evaluation, guidance and support will continue for a further (four week) period. Arrangements for this will be explained at the meeting. At the end of the period of monitoring and review, the teacher will be invited to a decision meeting (paragraph 10).

9.4 As before, notes will be taken of the formal meeting and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the teacher 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, the procedure and time limits for appealing against the final warning. The teacher should be clear that a decision meeting, at which consideration of dismissal is an option, will follow once the final written warning is issued.

10. Decision Meeting

10.1 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 teacher of the right to be accompanied by a companion. The invitation to attend should include a summary report which includes the outcome of the formal review meeting, as well as all the information referred to in the process so far – including:

- the original action plan and any written warnings,
- details of help and guidance provided and results of monitoring,
- copies of evidence from observations and other relevant evidence,
- a clear assessment by the Headteacher of the progress made.

10.2 The invitation to a decision meeting will make it clear who will be in attendance and who has the authority to dismiss. Authority to dismiss is as stated in paragraph 3.1. The decision meeting will follow the same format as the formal capability meeting (paragraph 7).

[The authority to dismiss has not been delegated to the Headteacher and so the decision meeting will be conducted before a Staff Dismissal Committee, comprising of three governors (or two where there is a shortage of eligible governors) and the Headteacher makes a recommendation to the Committee. The procedure for a capability hearing, *Disciplinary, Dismissal and Appeal Committee hearings procedure P303b*, should be followed.]

10.3 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal will re-start.

10.4 If performance remains unsatisfactory, a decision, (or recommendation), will be made that the teacher should be dismissed or required to cease working at the school. The teacher 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.

10.5 Where an employee has a grievance about the way in which the procedure has been conducted, this will be dealt with as part of the appeals procedure. Only in exceptional cases will agreement be given to pause the process and deal with the grievance via the grievance procedure.

11. Dismissal

[For Voluntary aided, Foundation and Foundation Special Schools only - Once the decision to dismiss has been taken, the Headteacher/Governors will dismiss.]

[For Community, Voluntary Controlled, Community Special and Maintained Nursery schools - Once the Headteacher has/Governors have decided that the teacher should no longer work at the school, the Local Authority will dismiss them within fourteen days of the date of the notification.

12. Appeals

12.1 If the employee appeals a formal warning, or a decision to dismiss, they must do so within five working days (or seven consecutive days out of term time) of the issuing of the warning or dismissal decision.

12.2 The appeal should be ideally heard within ten working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

12.3 Any appeal submitted by an employee will normally be heard by a panel of three governors (the Appeal Committee) although this can be reduced to a minimum of two if the Governing Board has a shortage of eligible governors.

12.4 Notice of at least five working days (or seven consecutive days out of term time) will be given for an Appeal Committee hearing. The invitation to an appeal hearing will include details of the time, date, venue and who will be in attendance, as well as the employee's right to be accompanied by a companion. A copy of the relevant paperwork referred to in the process will be issued with the invitation.

Strategy consideration - *The Disciplinary, Dismissal and Appeal Committee hearings procedure P303b* should be followed for appeal hearings.

12.5 The outcome of the Appeal Committee hearing must be confirmed in writing to the employee within five working days. If the Appeal Committee confirms dismissal, the teacher has no further right of appeal.

13. Passing information to prospective employers

13.1 Effective from 1 September 2012, revisions to the School Staffing Regulations (England) 2009 mean that schools are required by law to pass on information to prospective employers in other maintained schools or academies, about teachers and Headteachers who have been subject to formal capability procedures within the last two years. This is likely to be requested by the prospective employer as part of the request for a reference.

Strategy consideration - For guidance on what information is required see *References – provision to other employers guidance G119* on InfoSpace.

14. Data Protection

Personal data collected and processed for the purpose of this procedure will be handled in accordance with the data protection policy and applicable statutory obligations. Any personal data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of employee management or to comply with statutory reporting obligations. Inappropriate access to, or disclosure of, employee data constitutes a data breach and should be reported without delay, in accordance with the data protection policy. It may also constitute a disciplinary offence in which case it would be dealt with under the disciplinary policy and procedure.

Appendix 1 – Table of changes

Date of change	Paragraphs affected	Summary of update
24/10/2024	All	Review of whole document and terminology to ensure consistency across all policies and procedures.
13/03/2023	All	Review of whole document and addition of exclusions paragraph
29/11/2021	Background	Additional paragraphs to include consideration for employees with mental health issues.
15/09/2021	1	Updated to remove references to NQT's (Newly Qualified Teachers) and replace them with ECT's (Early Career Teachers)
01/12/2020	2	Addition of section on covert recordings.
06/06/2019	1, 3.1, 3.4, 6	Updates made following updates to the DfE's model policy on Teacher Capability. These are mainly based on ensuring there is regard to reduction of teacher workload when conducting performance management and that where a formal capability meeting is required the teacher has the right to request an alternative date within 5 days. Further updates also made based on Trade union feedback: • 1 Where an employee is also a lay TU official no disciplinary action can be taken until the case is discussed with a professional TU Officer. • 3.4 action plan should be mutually agreed but where this is not possible the Headteacher will make the final decision. • 6 where a grievance arises during the process it should be dealt with during the appeals procedure, unless there are exceptional circumstances, then the process may be paused.
27/11/2018		Updated to remove any references to academies as there is now a stand-alone academy capability model procedure for teaching staff.
17/05/2018	9	New para added to take account of the General data protection regulations in force from 25 May 2018.

01/03/2017	All	New formatting due to launch of new HR website, HR InfoSpace – no change to content
06/12/2017	6, 7, 9	Document title change, "Disciplinary, Dismissal and Appeal Committee hearings procedure P303b"