Stockton on the Forest Primary School

Teacher Capability Policy

Date policy last reviewed: July 2022

Signed by:

L Atkinson

Headteacher Date: 1st July 2022

Chair of governors Date: 1st July 2022

Last updated: 12 April 2021

Contents:

[Updated] Statement of intent

1. **[Updated]** Legal framework
2. **[Updated]** Roles and responsibilities
3. **[Updated]** General principles underlying this policy
4. **[Updated]** Capability procedure
5. Monitoring and review

[Updated] Statement of intent

[Updated] This policy sets out the framework for clear and consistent assessment of the overall performance of teachers, including the headteacher. It sets out the arrangements that will apply when teachers fall below the expected levels of competence.

1. [Updated] Legal framework

This policy has due regard to all relevant legislation and statutory guidance including, but not limited to, the following:

- Equality Act 2010
- The School Staffing (England) Regulations 2009 (as amended)
- DfE (2020) 'Governance handbook'
- DfE (2019) 'Teacher appraisal and capability: A model policy for schools'
- ACAS (2015) 'Code of practice on disciplinary and grievance procedures'
- DfE (2011) 'Teachers' Standards'
- DfE (2021) 'Staffing and employment advice for schools'
- DfE (2014) 'The Equality Act 2010 and schools'

[Updated] This policy operates in conjunction with the following school policies:

- **[New]** Teacher Appraisal Policy
- Grievance Policy
- Confidentiality Policy
- Disciplinary Policy and Procedure
- Records Management Policy
- **[New]** Whistleblowing Policy
- Teachers' Pay Policy
- Staff Leave of Absence Policy
- School Development Plan

2. [Updated] Roles and responsibilities

[Updated] The governing board is responsible for:

- Ensuring the effectiveness of this policy by monitoring and reviewing it annually.
- Ensuring that the capability process is managed in a way that avoids increased workload for all parties concerned.
- Ensuring that all members of staff have read and understood the provisions in this policy.
- Setting objectives for the headteacher, with advice from an appropriate external adviser.
- Ensuring all objectives contribute towards the SDP and improve the education of pupils at the school.
- Taking advice from an external adviser on the assessment of the headteacher's performance.
- **[New]** Ensuring all members of the board are informed that the performance review process has taken place.
- Conducting formal capability meetings where there are concerns about the headteacher's performance.
- **[Updated]** Once a decision to dismiss has been taken, dismissing the teacher or headteacher in question with notice. This will be done with the support of the LA.
- Ensuring consistency of treatment and fairness, and abiding by all relevant equality legislation.
- Ensuring all delegated responsibilities are carried out.

The headteacher is responsible for:

- The day-to-day implementation of this policy.
- Ensuring that the capability process is managed in a way that avoids increased workload for all parties concerned.
- Informing teachers of the standards against which their performance will be assessed.
- Conducting drop-in observations, where necessary, to evaluate standards of teaching and ensure high standards of professional performance are maintained.
- Conducting formal capability meetings where there are concerns about a teacher's performance.

Teaching staff are responsible for:

- Improving their teaching through proactive engagement in appropriate CPD opportunities.

3. [Updated] General principles underlying this policy

ACAS 'Code of Practice on Disciplinary and Grievance Procedures'

The capability procedure section of this policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

[Updated] Confidentiality

The capability process will be treated with confidentiality; however, the desire for confidentiality does not override the need for the headteacher and the governing board to quality-assure the operation and effectiveness of the capability procedure.

[Updated] This will be achieved by the headteacher and governing board:

- **[Updated]** Personally reviewing a sample of teachers' objectives for consistency.

Consistency of treatment and fairness

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 for teachers with disabilities. The governing board is aware of the guidance on the Equality Act 2010 issued by the DfE.

Definitions

Unless indicated otherwise, all references to "teacher" include the headteacher.

Delegation

Normal rules (as set out in The School Staffing (England) Regulations 2009) apply in respect of the delegation of functions by the governing board and headteacher.

Grievances

Where a teacher raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability

cases are related it may be appropriate to deal with both issues concurrently. Grievances should be handled in accordance with the school's Grievance Policy.

Sickness

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 Staff Leave of Absence Policy. The case will be referred immediately to the occupational health service, to assess the teacher's health and fitness for continued employment. Additionally, the suitability of continued monitoring or formal procedures will be evaluated in relation to the teacher's health. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of absence.

4. [Updated] Capability procedure

[Updated] This procedure applies only to teachers, including the headteacher, whose performance raises serious concerns that the appraisal process has been unable to address.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about performance-related concerns and their possible consequences to enable the teacher to prepare a defence for the formal capability meeting. Teachers are entitled to request an alternative date which is within five days of the original date.

The notice will also contain copies of any written evidence, the details of the time and place of the meeting, and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

[Updated] Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the chair of governors (for headteacher capability meetings) or headteacher (for other teachers). The meeting allows the teacher to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information or evidence already collected.

[Updated] 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 line with the school's Teacher Appraisal Policy. In such cases, the capability procedure will come to an end.

The person conducting the meeting may also adjourn the meeting if they decide that further investigation is needed, or more time is needed to consider 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 professional shortcomings of the teacher.

- Give clear guidance on the improved standard of performance needed to ensure that that the teacher can be removed from formal capability procedures.
- Explain any support that will be available to help the teacher to improve their performance.
- Outline the timetable for improvement and explain how performance will be monitored and reviewed.
- Formally warn the teacher that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the teacher. Where a warning is issued, they 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 appeals.

Monitoring and review period following a formal capability meeting

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

The teacher will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting.

[Updated] Formal review meeting

As with formal capability meetings, at least five working days' notice will be given. 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 companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

[Updated] If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will restart, in line with the school's Teacher Appraisal Policy. 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.

As before, notes will be taken of formal meetings and a copy sent to the teacher. 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. They will also be 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 teacher will be invited to a decision meeting.

[Updated] Decision meeting

As with formal capability meetings and formal review meetings, at least five working days' notice will be provided, and the notification will give details of the time and location of the meeting. The notice will also advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent.

[Updated] 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 restart, in line with the school's Teacher Appraisal Policy. If performance remains unsatisfactory, a decision or recommendation to the governing board will be made that the teacher should be dismissed or required to cease working at the school.

Before the decision to dismiss is made, the school will discuss the decision with the LA. The LA has the right to attend any dismissal related meetings.

The teacher will be informed as soon as possible of the reasons for their dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Decision to dismiss

The power to decide that members of staff should no longer work at the school rests with the governing board.

Dismissal

Once the decision to dismiss has been taken, the governing board or delegated authority will dismiss the teacher with notice.

Appeals

If a teacher feels that a decision to dismiss them, or another action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days, setting out the grounds for appeal at the same time. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

The same arrangements for notification and the right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

5. Monitoring and review

The governing board and headteacher will monitor the operation and effectiveness of the school's capability procedures, including monitoring the impact on workload.

The governing board and headteacher will ensure that all written records of capability procedures are retained in a secure place for six years in line with the school's Records Management Policy and in accordance with DfE guidance.

This policy will be reviewed on an annual basis. The next scheduled review date for this policy is July 2023.