

THE FEDERATION OF NETTLESTONE & NEWCHURCH PRIMARY SCHOOLS



Teachers' Capability Policy and Procedure

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Signed: _____

Chairman Board of Governors
The Federation of Nettlestone & Newchurch Primary School

All the governors and staff at Nettlestone Primary School are committed to sharing a common objective to help keep the children and staff of the school safe. We ensure that consistent effective safeguarding procedures are in place in order to support families, children and staff of the school. All policies should be read in conjunction with the Federation Child Protection Policy which can found in the Policies section on the school website.

Teachers' Capability Policy & Procedure

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1 Introduction

This procedure has been produced following consultation with teachers' unions (ATL, NAHT, NASUWT and NUT) governing bodies and teaching staff ending February 2013.

This procedure should be used on completion of the measures outlined in the appraisal policy (at appendix E) if these measures have proved unsuccessful.

- 1.1 Revised appraisal arrangements come into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which replace the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). The 2006 Regulations continue to apply to any performance management cycle which is in progress on 1 September 2012 unless the governing body or local authority decides to end that cycle early and begin a new appraisal period starting on or after that date.
- 1.2 The Appraisal Regulations set out the principles that apply to teachers in all maintained schools and unattached teachers employed by a local authority, in each case where they are employed for one term or more. They retain the key elements of the 2006 Regulations but allow schools more freedom to design arrangements to suit their own individual circumstances. They provide the minimum national framework within which schools should operate.
- 1.3 Schools and local authorities must have an appraisal policy for teachers and a policy which deals with lack of capability. This capability policy likewise applies to teachers and head teachers employed in all maintained schools and unattached teachers employed by the local authority. This policy should be used in conjunction with the Teacher Appraisal Policy (part A), September 2012.
- 1.4 This policy sets out the capability procedure which reflects the ACAS Code of Practice on disciplinary and grievance procedures.
- 1.5 As from **1 March, 2013** this policy replaces the statutory guidance "Capability Procedures for Teachers" that was issued in July 2000 for unattached teachers employed by the local authority. As from 1st March

2013 at this school, it applies to teachers and head teachers about whose performance there are serious concerns that the appraisal process has been unable to address. A transition from the Teacher Appraisal Policy to the Teachers' Capability Policy will trigger the commencement of the capability procedures.

2 General principles underlying this policy

2.1 Consistency of treatment and fairness

The governors are 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 teachers. The governors involved in this procedure are aware of the guidance on the Equality Act issued by the Department for Education. (It would be best practice to seek advice from your HR provider before instigating these procedures).

2.2 Definitions

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

2.3 Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

2.4 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 it may be appropriate to deal with both issues concurrently.

2.5 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 attendance management policy and will be 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. (For the avoidance of doubt this means that a decision will be made whether or not the procedure will continue during absence or the member of staff will be invited to attend a meeting according to the school's attendance management policy for a decision regarding capability as a result of long term sickness absence. Long term sickness absence is deemed to be four weeks.) In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

2.6 Monitoring and evaluation

The governing body and head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

2.7 Retention

The governing body and head teacher will ensure that all written records are retained in a secure place for six years and then destroyed but any written warnings should be retained on the teacher's personnel file for capability purposes only for the period specified on the warning.

2.8 Right to be accompanied at formal meetings

The ACAS guidelines will be used. If a work colleague, trade union official or trade union representative is not available for the first scheduled date of a formal meeting, the meeting will be rescheduled once which should be within five school working days. It is the responsibility of the teacher to arrange representation for the meeting.

3 Commencement of the formal procedure

- 3.1 This procedure applies to teachers and head teachers about whose individual performance there are serious concerns that the appraisal process has been unable to address and where there has been a transition to this capability procedure at 3.6 of the Teacher Appraisal Policy 2012.
- 3.2 See Appendix B for a flowchart of the following procedure.

4 Formal capability meeting

- 4.1. The purpose of the meeting is to agree the facts and issues that led to the instigation of this capability procedure and to allow the teacher to respond to concerns about their performance, making any relevant representations. This may result in new information being provided or that, which has already provided, being seen in a different context.
- 4.2 The person at this school who will chair the meeting could be (head teacher) for teachers unless that person has been the key provider of evidence (through the appraisal process) with a panel of two others and (the chair of governors) for the head teacher unless that person has been the key provider of evidence (through the appraisal process) with a panel of two others. For local authority employed unattached teachers, the teacher's line manager will chair the meeting unless that person has been the key provider of evidence (through the appraisal process) in which case the teacher's line manager's line manager will chair the meeting.
- 4.3 At least five school working days' notice (not days that the teacher works but when the school is open, this will also apply to local authority unattached teachers) will be given of the capability meeting. The written notification will set out the nature of the issues that gave rise to the instigation of the capability procedure and their possible consequences to enable the teacher to prepare for the meeting. It will contain:
 - 1. details of the time and place of the meeting;
 - 2. copies of any written evidence;
 - 3 notification of the right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

4 Potential outcomes of the meeting

- 4.5 The panel conducting the meeting may conclude by a simple majority 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. Such a decision should be recorded in writing and a copy sent to the teacher and a copy retained on the personnel file for the period of time specified above (2.1 Retention). In the case of the local authority unattached teacher the manager chairing the meeting will make the decision. Further references to 'manager' will refer to local authority unattached teachers.
- 4.6 The chair of the panel (or manager) 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. The meeting should be reconvened by agreement within 10 school working days.
- 4.7 In other cases the meeting will continue. During the meeting, or any other meeting which could lead to a formal written warning being issued, the panel (or manager) will:
- identify the professional shortcomings;
 - provide the employee with the opportunity to respond fully, including an explanation of their performance and / or mitigating factors;
 - give clear guidance on the improved standard of performance needed to ensure that the teacher 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;
 - set out the precise nature of any support that will be available to help the teacher improve their 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. It will be for the panel to decide what a target appropriate period of time should be. Consideration should be given to what is reasonable and proportionate and should provide sufficient opportunity for an improvement to take place;
 - warn the teacher formally that insufficient improvement within the set period could lead to a written warning, in very serious cases this could be a final written warning and ultimately dismissal.

4.8 Notes will be taken and a copy sent to the teacher. There will be an opportunity to challenge the notes before they are agreed as a true record of the meeting. Where a warning is issued, the teacher 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 for appealing against the warning (see section 10 for appeal procedure guidance).

5 Monitoring and review period following a formal capability meeting

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

5.2 If the teacher had been issued with a formal warning, the next stage of the procedure would be the formal review meeting. If the teacher had been issued with a final warning the next stage of the procedure would be the decision meeting.

6 Formal review meeting

6.1 The person conducting this meeting in this school will be the chair of the panel (or the manager).

6.2 At least five school working days' notice will be given of the formal capability meeting. It should contain:

1. details of the time and place of the meeting;
2. copies of any written evidence;
3. notification of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.
4. a statement summarising the nature of the issues which gave rise to the instigation of the capability procedure.

6.3 If the panel is satisfied by majority decision (or the manager is satisfied) that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

6.4 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. In this case the panel will:

- identify where further improvements can be made and if appropriate which of the professional standards expected of teachers are still not being met;
- provide the employee with the opportunity to respond fully, including an explanation of their performance and / or mitigating factors;
- explore and set out any additional support that could be available to help the teacher to continue to improve their performance;
- set out the timetable for continued improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. It will be for the panel (or manager) to decide what a target appropriate period of time should be. Consideration should be given to what is reasonable and proportionate and should provide sufficient opportunity for an improvement to take place;
- warn the teacher formally and in writing that not achieving the required improvements within the revised set period could lead to a final written warning and ultimately dismissal.

6.5 In a case where insufficient improvement has been made and in the absence of any mitigating circumstances that have had a significant effect during the monitoring and review period, the teacher will receive a final written warning.

6.6 Notes will be taken at the review meeting and a copy sent to the teacher. There will be an opportunity to challenge the notes before they are agreed as a true record of the meeting. The final written warning will repeat any previous warnings that have been issued. It must be made clear that the teacher may be dismissed if they do not achieve an acceptable standard of performance within a revised timescale. The teacher will be informed in the final written warning of the matters discussed at the meeting and given information about the timing and management of the decision meeting and the procedure for appealing against the warning (see section 10)

7 Decision meeting

7.1 The person at this school who will chair the meeting could be (head teacher) for teachers unless that person has been the key provider of evidence (through the appraisal process) with a panel of two others and (the chair of governors) for the head teacher unless that person has been the key provider of evidence (through the appraisal process) with a panel of two others. Ideally, for continuity purposes the panel will consist of the same members of the previous formal meetings. For

local authority employed unattached teachers, the head of service will chair the meeting.

7.2 As with formal capability meetings and formal review meetings at least five school working days' notice will be given of the decision meeting. It will contain:

1. details of the time and place of the meeting;
2. copies of any written evidence;
3. notification of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.
4. a statement summarising the nature of the issues which gave rise to the instigation of the capability procedure.

7.3 If an acceptable standard of performance has been achieved during this further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a recommendation to the Governing Body will be made that the teacher should be dismissed from employment at this school. For local authority unattached teachers the head of service will make the decision.

7.4 Before the Governing Body makes a decision it is essential that the matter is discussed with (the local authority, where the local authority is the employer).

7.5 Once the decision has been ratified by the Governing Body (and employer, where the local authority is the employer) the teacher will be informed as soon as possible and confirmed in writing of the following:

- the reasons for the dismissal;
- the date on which the employment contract will end;
- the appropriate period of notice;
- their right of appeal.

8 Dismissal

8.1 *Where the local authority is the employer*, once the Governing Body has decided that the teacher should be dismissed, it will inform the teacher in writing and will notify the local authority of its decision immediately and the reasons for it. The local authority will confirm the decision to the teacher in writing within fourteen days.

9 Appeal

- 9.1 The teacher has the right to appeal against any written warnings at each stage of this procedure including dismissal. The appeal should be made in writing giving full details of the grounds for the appeal within ten school working days of the decision being made.
- 9.2 Appeals will be heard without unreasonable delay. The same arrangements for notification and right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative will apply as with formal capability and review meetings. As with other formal meetings, notes will be taken and a copy sent to the teacher. There will be an opportunity to challenge the notes before they are agreed as a true record of the meeting.
- 9.3 The appeal will be dealt with impartially by a strategic director within the local authority for unattached teachers or governors from the school who have not previously been involved in the case.
- 9.4 The teacher will be informed in writing of the results of the appeal meeting as soon as possible.

10 The appeal process

A teacher has the right to appeal against any sanction imposed at any stage of the formal capability procedure, including dismissal. The request for an appeal must be made in writing to the clerk to the governors (or in the case of local authority unattached teachers the appeal should be made to the manager who made the decision that is being appealed).

The appeal must be made within ten school working days of the date of the warning letter or decision letter and must state clearly the grounds upon which an appeal is being made. Save in exceptional circumstances, the teacher may only make an appeal on the following grounds:

- the decision: the evidence did not support the conclusion of the panel and / or
- the penalty: this was too severe given the circumstances of the case; and / or
- new evidence has come to light since the meeting and was not reasonably available at the time of that meeting; and / or
- it is considered that the capability procedure was not followed correctly.

The appeal meeting will normally take place within fifteen school working days of receipt of the employee's written notice of appeal or on a date which is mutually agreed by the parties.

The clerk to governors will work with the person who conducted the previous capability review meetings to arrange the appeal meeting. The appeal will be heard by a panel of three governors from the Appeals Committee who have not have been involved in any part of the proceedings to date. For local authority employed unattached teachers the strategic director will arrange the appeal meeting and write to the teacher to invite them to attend an appeal meeting.

In schools the clerk to the governors will write to the teacher to invite them to attend an appeal meeting.

The teacher will have the right to be accompanied by a colleague a trade union official or trade union representative. They must take all reasonable steps to attend. Account will be taken of any reasonable adjustments required under the Equality Act 2010.

Where either the employee and / or their work colleague, trade union official or trade union representative is unable to attend the meeting and provides with notice a good reason for not being able to attend, the meeting will be reconvened within five school working days of the original meeting date or on another date which is mutually agreed by the parties.

The appeal panel / strategic director will consider any representations from the teacher and / or their work colleague, trade union official or trade union representative. The teacher must provide any supporting evidence for the basis of their appeal to the clerk to the governors or strategic director, at least five school working days prior to the appeal meeting date including the details of any witnesses the teacher wishes to call. Witnesses may also be called by the panel/strategic director.

All parties will receive copies of the information (including any new information) to be presented at the appeal meeting at least two clear working days prior to the meeting including the details of any witnesses. The chair of the panel who made the decision at the previous meeting will be required to attend the appeal meeting to respond to the grounds of the appeal. For local authority employed unattached teachers, the manager who made the decision at the previous meeting will be required to attend the appeal meeting to respond to the grounds of the appeal.

11 The Appeal meeting

The appeal panel / strategic director will:

- consider all the information, including any new information presented;
- determine whether the grounds for the previous capability sanction were valid;
- determine whether the sanction should remain the same, or should be increased, reduced or removed.

The chair of the panel / strategic director conducting the meeting may adjourn proceedings if this is considered to be necessary and the teacher (and their companion) will be informed of the period of the adjournment. If further information is to be gathered, the teacher will be allowed a reasonable period of time, together with their companion, as should the panel/ strategic director, to consider the new information prior to the reconvening of proceedings.

As soon as possible after the conclusion of the appeal meeting, the chair of the panel / strategic director will convey the decision verbally to the teacher and to the governor who presented the case at the meeting.

The decision will be confirmed in writing to the teacher by the clerk to governors on behalf of the chair of the panel within five school working days of the meeting; the teacher will also be informed of the reasons for the decision and that the decision is final.

For local authority employed unattached teachers the decision will be confirmed in writing to the teacher by the strategic director. The teacher will also be informed of the reasons for the decision and that the decision is final.

Appendix A – Order of events at an appeal meeting

The purpose of an appeal meeting will be to establish whether any of the grounds for the appeal should be upheld or not.

The chair will invite the teacher to state the grounds for their appeal first and then the chair of the panel / manager who made the decision to issue the sanction appealed against will then provide the background and reason for the decision.

The meeting should be adjourned to enable the panel / strategic director to consider the information presented.

The decision of the appeal panel / strategic director will be final and there will be no further right of appeal.

Appendix B - Formal Capability Procedure for Teachers – flowchart

(NB: Schools/ managers will need to tailor the length of their monitoring and review periods to suit individual cases)



