Schools Teacher Staff Capability Policy 2026/27

Mayesbrook Park School
Alternative Provision for young people in Barking and Dagenham

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Introduction

Guidance for Head Teachers and Governing Bodies

This policy is intended to support Governing Bodies and Head Teachers to manage capability concerns for teaching staff. Where teachers are experiencing difficulties, emphasis should be placed initially on providing informal support and advice within the school and, if appropriate, from external sources which may include the Barking & Dagenham School Improvement Partnership (BDSIP). If these measures are not successful in bringing about sufficient improvement more formal procedures should be considered and this forms the substance of this policy.

This policy is offered to Governing Bodies and Head Teachers as an example of good practice for adoption to secure fair and equitable treatment for all teachers within each school and across the Local Authority. This policy was agreed with Teachers Professional Associations locally in DATE. Adoption and operation of these procedures should ensure that the Governing Body and Head Teacher operate in accordance with the following provisions: -

1. The Education Acts, 1996, onwards and regulations made under them.
2. The Employment Rights Act, 1998 and other relevant employment legislation.
3. The ACAS Code of Practice on disciplinary and grievance procedures.
4. The Conditions of Service for School Teachers in England and Wales. (Burgundy Book)
5. The Authority's Articles of Government for Schools.
6. The Conditions of Service issued to teachers at the time of their employment and the letters which confirm their Contract of Employment.

Adoption of these procedures will ensure that the Governing Body will have the full support of the Local Authority in progressing cases.

If a maintained, voluntary aided or voluntary controlled Governing Body chooses to adopt alternative procedures then a copy of these procedures, together with the reasons for their adoption, should be sent to the Commissioning Director Education who will advise the Secretaries of the Professional Associations. Any such alternative procedures will need to be the subject of their own consultation between the Governing Body and the Teachers' Professional Associations.

If an academy or free school within the local authority wants to adopt this policy, they should send a copy of this policy together with the consultation and its outcomes to the Commissioning Director Education. Governors must ensure that the adopted procedures are readily available to and understood by all members of the teaching staff.

This procedure relates exclusively to issues of the professional competence and performance of teachers in maintained community and voluntary-aided schools within the local authority. Academies, free schools and voluntary controlled schools may have their own procedures.

It does not relate to matters of misconduct, or cases of ill-health. In addition, it does not apply to Newly Qualified teachers or to Head Teachers for whom there are separate procedures.

OVERVIEW OF THE PROCESS

A summary of the process is as follows:
Please note all meetings should be arranged in the employee's normal working hours and 5 working days' notice should be given.

1. **INFORMAL STAGE**
2. **FORMAL STAGE**
3. **WRITTEN WARNING**
4. **FINAL WRTTEN WARNING**
5. **STAFF DISMISSAL COMMITEE STAGE**
6. **APPEALS PROCEDURE**

This document shall be known as "**Schools Teachers Capability Policy**" **for the London Borough of Barking and Dagenham maintained community, voluntary aided, voluntary controlled schools and Academies**.

DEFINITIONS

a) "The Education Acts" means the Education Act, 1996, as amended by any subsequent enactment.
b) "The Authority" means the London Borough of Barking and Dagenham.
c) "The Governors" means all members of the Governing Body of a school appointed from time to time, in accordance with the provisions of the Education Acts and in accordance with the decisions of the Authority and the provisions of the Articles and instrument of Government.
d) "The Commissioning Director Education" means the Chief Officer appointed as such by the Council of the London Borough of Barking and Dagenham, or his representative.
e) "The Head Teacher" means the person who has been appointed - whether on a permanent, temporary, or acting basis - in accordance with the provisions of the Articles of Government.
f) "The Teacher" means the person employed by the Authority who is paid in accordance with the scales of salaries for teachers in such schools. This includes teachers paid on unqualified, main scale, upper pay scale, advanced skills teachers scales and the leadership scale.
g) "An HR adviser" means any person appointed by the governors to provide HR advice who is employed, experienced, skilled and qualified to do so by the council or a private or voluntary sector organisation.
h) "An advisory teacher, adviser, senior or principal adviser" means the person appointed as such by the Council of the London Borough of Barking and Dagenham.
i) "Lack of capability" means a situation in which a teacher fails consistently to perform their duties to a professionally acceptable standard.

APPLYING THE PROCEDURES

i) <u>Scope of the Procedure</u>

At every stage in the procedure concerns about the teacher's performance must be discussed with the teacher, who should be advised of the nature of the concerns and be given the opportunity to state their case before any decision is made.

At any stage in the procedure consideration may be given to allocating the teacher a different balance of duties or placing them in an alternative teaching post.

All formal proceedings shall be confidential and held in private. If a public statement is considered necessary it will normally be confined to the operative decision only.

ii) <u>Role of Governors</u>

Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where Governors are involved in considering an appeal against a final written warning. The use of Governors to hear any appeals against final written warnings should be limited to ensure a sufficient number of impartial Governors remain available for the Staff Dismissal Committee and the Staff Appeals Committee. The principle of natural justice means that those involved in the case at a later stage should have no prior knowledge of the case. Normally at least three Governors are required for the Staff Dismissal Committee and the Staff Appeals Committee.

iii) Representation at formal interview, evaluation meetings, dismissal hearing and appeal hearings
A teacher has an entitlement to be accompanied at all **formal** meetings as part of these procedures by a representative of their professional association, or a work colleague. If the teacher's chosen companion is not available at the time proposed for the meeting, and the teacher proposes an alternative that is reasonable and falls within 5 working days (excluding school closure periods) of the day proposed, the meeting should be rearranged to the time proposed by the teacher.

The Head Teacher may be accompanied at any stage in the formal proceedings by a representative of the Commissioning Director Education in an advisory capacity. The Head Teacher may also be accompanied at any formal meeting by an HR adviser, in an advisory capacity.

iv) Timescales
All stages of the formal procedure shall be carried out as promptly as possible in the interests of all the parties involved. Meetings will normally be held in term time unless there are exceptional reasons**,** and mutual agreement**,** to hold a meeting during a school closure period.

Notice of at least 5 working days (excluding school closure periods) must be given for all formal meetings as part of the capability procedures. The date of successive meetings should be provisionally planned at the preceding meeting where possible.

Where a teacher has exercised their right to appeal under this procedure the period of the review will nevertheless commence from the date of the final written warning. If appropriate the review will be discontinued when the outcome of the appeal is known.

Where the teacher has the right of appeal, the appeal must be lodged by the teacher or their representative within 5 working days (excluding school closure periods) of receipt of the letter confirming the warning/dismissal.

v) Support for the teacher
Those colleagues that support the teacher should act in a coaching role, offering advice and guidance to help the teacher improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure.

vi) Monitoring arrangements
Those monitoring the performance should offer feedback and guidance to help the teacher improve performance. Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

vii) Written records
A written record should be made of all interviews with the teacher and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded after a specified period of satisfactory performance. These periods are two terms for a written warning and six terms for a final written warning (taken from the date of the issue of the warning).

When a complaint of lack of professional competence or failure in performance is upheld against a teacher and a warning is issued, the teacher's written observations shall, if they request, be included in the record alongside the warning.

Where, having reviewed the evidence, a complaint of lack of professional competence or failure in performance against a teacher is rejected by the Head Teacher or Governors all references to the complaint shall be removed from the teacher's file.

viii) Staff who are absent through illness during the procedure
Sickness absence which is triggered by the capability procedure, and which management believe is likely

to be long term, must be referred immediately to Occupational Health to assess whether the teacher is fit for continued employment and/or to attend a meeting about their competency.

Short absences should not delay any part of the formal stage of the capability procedure although each case must be considered on its individual merits. Reasonable steps should be made to enable the teacher to attend meetings scheduled as part of these procedures. Where the teacher is unable to attend and having considered the medical evidence available, the meeting may proceed in the teacher's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances the teacher's representative should still be allowed to attend the meeting, and a full account of the evaluation should be provided in the letter to the teacher confirming the decision taken.

ix) Decisions on continuing the procedure and recommending dismissal
The decision to continue a capability procedure or recommend dismissal should be taken by the Head Teacher.

x) Disputes about the procedure
Any disagreements about the interpretation of this procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling that particular case.

xi) Grievances
In exceptional circumstances a teacher may raise a grievance about the behaviour of a Head Teacher, or other manager, during the course of a capability procedure.

Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered by Governors. Such a delay should only be considered where there is a strong indication that the teacher has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.

If an employee raises a grievance, in writing, about the way in which a manager handled a capability case or conducted the investigation/monitoring before the appeal stage of the capability procedure it will be discussed, and the outcome recorded at the appeal hearing. If an employee raises a grievance relating to the capability process after the process has been completed and after any appeal arising from it has been heard, it will not be allowed, as the appeal will have served to consider whether management action and other circumstances have been properly handled by the School.

xii) Union Representatives
No action beyond the informal stage shall be commenced against a teacher who is a union/professional association representative without the Head Teacher having first discussed the matter with a senior representative or full time official of that union/professional association.

xiii) Serious Cases
In extreme cases where the Head Teacher considers that the education of pupils is jeopardised, after consultation with the Commissioning Director Education , may decide to move directly to the Formal Procedure with the consideration of a final warning.

In such cases, the period given for improvement will be no more than 4 working weeks (excluding school closure periods), and the teacher should be advised to consult with their professional association as a matter of urgency.

THE PROCEDURES

INFORMAL STAGE

Meeting to set up the informal process – 5 working days' notice (excluding school closure periods)

When a teacher is believed to be under-performing (as defined above) the Head Teacher should investigate, gather evidence and discuss the concerns with the teacher. In large schools and secondary schools, the head of department or other appropriate line manager should be involved in the discussion. Clear written guidance should be provided that outlines:

- the under-performance issues
- what is expected of the teacher in relation to the job description
- improvements required
- how they will be monitored
- timescales and review date should be provided.

The teacher should be advised to consult with their professional association. Written copies of all advice may be kept.

The teacher should work under the supervision of a senior member of staff who is in a position to assist them.

It may also be appropriate for the Head Teacher to seek advice at this stage from an external source which may include the Barking & Dagenham School Improvement Partnership.

Attendance at in-service courses, and/or opportunities to shadow colleagues should be arranged where it is thought these would be helpful and practical and the teacher wishes to take up this offer. The Head Teacher should ensure that it is clear to everyone involved that all proceedings at this stage are informal.

Discussions at this stage *they* must not turn into a formal interview but it should be made clear to the teacher that failure to improve will lead to the formal stage of the procedure and the teacher and/or representative has the opportunity to comment and their views will be noted in writing.

Monitoring and review period – 8 Working Weeks (excluding school closure periods)

The timeline for improvement (the monitoring and review period) and a date for the next/final evaluation meeting should be determined and agreed.

The teacher should be informed what support will be available (normally provided by the school and/or external partners) and how performance will be monitored over the agreed period of time.

The support provided by an external agency which may include the BDSIP should include:

- advice from an advisory teacher/adviser who should suggest targets for improvement and strategies for achieving these.
- preferential treatment for financial support to attend a relevant course or courses, where this is supported by the school;
- the opportunity to be released to observe colleagues in other schools, where this is thought to be practical and relevant.

Informal Stage Review Meeting – 5 working days' notice (excluding school closure periods)

The teacher's performance should be reviewed after a minimum of 8 working weeks (excluding school closure periods).

The assistance and supervision may be ended or modified if the teacher makes satisfactory progress or

better. However, if it appears that more formal proceedings are required, consultation with a nominated LA Link Officer and HR should take place before further action is taken.

FORMAL STAGE – Monitoring and review period - 12 working weeks (excluding school closure periods)
Formal capability meeting – 5 working days' notice (excluding school closure periods)

- This meeting initiates the formal stage of the capability procedure.
- At this stage, any external sources of support, including BDSIP, should be informed so that a plan of support and advice can be arranged.
- The formal stage of the procedure provides an opportunity to deal with more serious problems in a structured way.
- The teacher should therefore be advised to consult with their professional association. The teacher may be accompanied at the formal interview by a representative of their professional association or a work colleague.

The formal capability meeting allows the teacher to prepare a response about their performance and make a case. At least 5 working days' notice (excluding school closure periods) must be given for the meeting.

The meeting may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the meeting should be adjourned for an appropriate length of time to allow this to happen.

A decision should be made after all the facts and any representations from the teacher have been considered. The Head Teacher should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the teacher.

There are three possible outcomes of the formal capability meeting.

- **Option 1:** drop the matter (where there is no evidence of lack of capability).
  This is only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed.
- **Option 2:** continue the formal process with a 12-working week (excluding school closure periods) monitoring and review period.
- **Option 3:** agree to extend and continue with informal process (Maximum 8 working weeks, excluding school closure periods)

Option 2 and 3 are relevant to any case where continued concern about the standard of performance is justified.

Regular observation, monitoring and evaluation of performance, with guidance, training if necessary and support to the teacher.

The Head Teacher should use the remainder of the formal review meeting to:

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to end the capability procedure;
- explain any support that will be available (normally provided by the school and external partners), and how performance will be monitored over the following weeks;
- identify the timetable for improvement (the monitoring and review period) and agree a date for the next/final evaluation meeting;
- make it clearly understood that failure to improve may ultimately lead to dismissal and
- ensure the teacher and/or their representative has the opportunity to comment and record their views in writing.

A letter should be sent to the teacher within 5 working days (excluding school closure periods) after the formal capability meeting recording the result of the investigations, the main points discussed at the meeting.

If, following the relevant assessment period, performance has not improved, the matter will progress to a final stage. Thereafter, in cases where performance remains unacceptable, a decision may be taken to dismiss.

The support provided by the school should include the designation of a fellow teacher as a mentor to assist in setting developmental targets, oversee training and act as a confidential counsellor.

The support provided by an external agency (which may include the BDSIP) should include:
advice from an advisory teacher/adviser who should suggest targets for improvement and strategies for achieving these.

- preferential treatment for financial support to attend a relevant course or courses, where this is supported by the school;
- the opportunity to be released to observe colleagues in other schools, where this is thought to be practical and relevant.

Notes of discussions with the advisory teacher/adviser should be kept and both parties should have signed copies. These should be confidential and should not form part of any monitoring of the teacher's work or part of the decision at the end of the period.

Monitoring of the teacher's work should be undertaken separately by both a member of the senior management team of the school and a senior or principal adviser from the School Inspection Service. Both should keep detailed notes of observations made and, following discussion, these records should be signed by both teacher and the monitor and each should have a copy**.**

At the end of the designated period both the member of the senior management team and the senior/principal adviser should write an assessment of the teacher's work and should provide the teacher with a copy.

Formal Review Meeting – 5 working days' notice (excluding school closures)
If it is deemed that insufficient progress has been made the outcome of the formal Review Meeting may be the issue of a Final Written warning.

The teacher should also be informed that, if insufficient improvement is made in the prescribed period, dismissal may result.

The teacher may appeal the determination of a Final Written Warning.

FINAL WRITTEN WARNING
Monitoring and Review Period – 4 weeks

- The period of assessment for a final written warning will begin a maximum assessment period of four weeks.
- Formal monitoring, evaluation, guidance and support should continue for this period. Arrangements for this should be explained at the meeting.
- The teacher must be told clearly that failure to achieve an acceptable standard may result in dismissal.
- Structured feedback should be provided and the key points confirmed in writing to the teacher. The letter should include:
- a) the nature of the failure of performance, the areas in which improvement is required and the implications of a failure to improve;

b) the criteria which will be used to judge future competence;
c) the programme of support which will be provided by both the school and external agencies including BDSIP;
d) the timescale within which improvements must be made.

An appeal against a final written warning must be made within 5 working days (excluding school closure periods). Where a teacher has exercised their right to appeal, the period of the review will nevertheless commence from the date of the final written warning. If appropriate, the review will be discontinued when the outcome of the appeal is known.

Final Review Meeting – 5 working days' notice (excluding school closure periods)
There must be a Formal Review meeting between the Head Teacher and the teacher to assess performance over the previous weeks. The teacher may be accompanied at this meeting by a representative of his trade union/professional association or a work colleague. At least 5 working days' notice (excluding school closure periods) of the meeting must be given. If the level of performance has been satisfactory and targets have been met, the capability procedure can end here. This will be confirmed in writing to the teacher by the Head Teacher although a record of the written warning issued will remain on file for the specified period.

If insufficient progress has been made then an outcome of the final Review Meeting may be a recommendation to Governors or appropriate body for dismissal. The teacher may appeal a decision to dismiss.

STAFF DISMISSAL COMMITTEE STAGE
The Governing Body should set up a Staff Dismissal Committee with at least three governors. This must hear the representations and recommendations brought by the Head Teacher conducting the capability procedure. The Staff Dismissal Committee should also consider any representations that the teacher (and/or their representative) may wish to make.

The Governing Body should also set up a Staff Appeal Committee to hear any appeal against a written or final warning given as part of this procedure. None of the Governors on the Staff Dismissal Committee shall be on the Staff Appeal Committee.

Where a capability case is referred to the Governing Body a meeting of the Staff Dismissal Committee shall be convened to consider the case within 15 working days (excluding school closure periods) of notification from the Head Teacher.

The teacher shall be given not less than 5 working days' notice (excluding school closure periods) in writing of the meeting and shall be informed of the nature of the complaints about their performance, the date, time, venue and purpose of the meeting. The teacher should be advised of their right to be accompanied by a professional association representative or work colleague.

Not less than 5 working days (excluding school closures) before the date of the meeting the teacher shall be provided with two copies of all documents/written evidence and a list of the persons to be called in support of the complaint.

The Staff Dismissal Committee will be advised to follow a procedure for continuing the meeting as set out below:

- The Corporate Director of Children's Services shall appoint an appropriate officer to attend the meeting (with regard to Community and Voluntary Aided Schools) and advise the Governors on procedures and to act on their behalf as Clerk to the proceedings. The Staff Dismissal Committee should consider this advice prior to making its decision.
- The Head Teacher will put the case against the teacher and shall call witnesses as necessary in the

presence of the teacher and their representative.
- The teacher and/or their representative shall have the opportunity to ask questions of the Head Teacher or any witnesses on the evidence presented.
- The teacher or their representative will put their case calling witnesses and/or documentary evidence as he/she considers appropriate.

NB(Except in exceptional circumstances, agreed by all parties present, the mentor and any external support teacher/adviser shall not be called as witnesses by either side).

- The Head Teacher shall have the opportunity to ask questions of any witness called by the teacher on the evidence presented.
- The members of the Staff Dismissal Committee shall have the opportunity at any stage to ask questions of both parties, their representatives and witnesses.
- Witnesses will normally be asked to leave the meeting once they have given their evidence and answered any appropriate questions.
- Before summing up, either party may, in appropriate circumstances, recall and re examine any witness. Thereupon the other party shall also have the right of re examination.
- The Head Teacher shall have the opportunity to sum up but must not introduce new evidence at this stage.
- The teacher, or their representative, shall have the opportunity to make the final summing up but must not introduce new evidence at that stage.
- Both parties and all witnesses shall then withdraw, leaving the Governors to deliberate in private. The officer representing the Corporate Director of Children's Services shall remain with the Governors in order to advise on procedural matters and to record their decisions. If there is need to recall either side to clarify points of uncertainty then both parties will return, even if only one side is involved. Witnesses may be recalled and re examined by the Governors in the presence of both parties.
- Where possible the decision will be indicated to both parties verbally after the meeting. The decision will be confirmed in writing as soon as possible, but within 5 working days.
- The Governors may decide to take one of the following courses of action:
- to dismiss the teacher;
- to halt the capability procedures as there is insufficient evidence of a lack of capability.

APPEALS PROCEDURE

Against written warnings

In the event of the teacher wishing to appeal against a written warning issued by the Head Teacher, written notice of the appeal, together with the grounds upon which the appeal is based should be lodged within 5 working days (excluding school closure periods) of the date of the letter confirming the issue of the warning with the Clerk to the Governing Body.

The appeal shall be heard by the Staff Appeals Committee of the Governing Body within ten working days wherever possible.

At least 5 working days' notice (excluding school closure periods) of the date and place of the hearing will be given to the teacher. The teacher may be accompanied by their professional association representative or a work colleague. The Staff Appeals Committee will normally comprise of three members.

The process to be followed at an Appeal Hearing should be the same as for a Staff Dismissal Committee (see 5.6).

At the Appeal Hearing, Governors must hear representations from both parties before making a decision.

Governors must not use information received outside the Capability Procedure process as part of their decision-making process.

The Staff Appeals Committee may choose to:

- Dismiss the appeal
- Impose a lesser sanction
- Uphold the appeal

The Appeals Committee shall not be empowered to impose a more severe sanction than originally imposed by the Head Teacher.

The decision of the Appeals Committee shall be confirmed in writing to the teacher within 5 working days (excluding school closure periods). There is no further internal right of appeal.

Appeals against Dismissal

Where the Staff Dismissal Committee has decided to dismiss the teacher, the teacher has the right of appeal to the Staff Appeals Committee of the Governing Body. This Committee shall normally consist of three members of the Governing Body and, in any case, of no fewer members than the Staff Dismissal Committee. Any decision to appeal should be communicated in writing to the Clerk to the Governors within 5 working days (excluding school closure periods) of the letter confirming dismissal.

Governors involved in the Staff Dismissal Committee must not be involved in any appeal against the decision of the Staff Dismissal Committee.

The teacher shall be given at least 5 working days' notice (excluding school closure periods) of the time and place of the appeal, in writing and may be accompanied by a professional association representative or a work colleague.

The Staff Appeals Committee may decide to:

- Uphold the dismissal of the teacher
- Impose a lesser sanction
- Reinstate the teacher

The decision of the Appeals Committee shall be confirmed in writing to the teacher within 5 working days (excluding school closure periods). There is no further internal right of appeal.