Federation of
Westminster Special Schools
& Bi-Borough Inclusion Service

Capability Policy

Approved by Full Governing Board: October 2026

To be reviewed: October 2027, or earlier if legislation or guidance changes

Introduction

1.1 Federation of Westminster Special Schools (FWSS) is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all our children and young people (CYP) whatever their ability. Each staff member will therefore be given support to ensure they are able to develop the skills they need to carry out their role, to help them continually improve their performance and to develop to their full potential, which will in turn help improve outcomes for our children and young people.

1.2 Having an effective performance management process in place is one of the ways we can support our staff and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out appraisals, providing development opportunities and operating a fair and reasonable capability process.

1.3 This policy should be read alongside FWSS Staff Mental Health and Wellbeing Policy.

1.4 This policy sets out the arrangements that will apply when a staff member falls below the levels of competence and performance expected of them and serious underperformance has not been resolved through appraisal and informal support. Its primary purpose is improvement, not punishment. The Federation will act fairly, maintain confidentiality, protect dignity and provide appropriate support throughout. Formal action will only be taken where concerns remain sufficiently serious after reasonable support, except in the most serious cases.

1.5 This policy is based on the Department for Education non-statutory guidance, "Teacher capability: guidance for schools when dealing with serious under-performance", published in July 2024 and valid from September 2024, together with the ACAS Code of Practice on disciplinary and grievance procedures.

1.6 The term ‘capability’ is defined as the ability of an employee to perform their duties to the standards required.

1.7 Capability procedures apply to all staff members of the Federation where there are concerns, which the appraisal process has been unable to address, of not meeting the required standards of work performance.

1.8 Capability procedures are typically not used during the probation period as performance issues are normally managed through probationary review processes, not formal capability.

1.9 Capability procedures apply to Early Career Teachers (ECTs) after the statutory induction period has been completed.

1.10 Except in the most serious cases of persistent failures to meet job expectations, resulting in negative consequences on the CYP and the organisation, staff members should not be placed on capability procedures without first undergoing a period of **informal support.**

1.11 This support should have clear, achievable objectives, agreed success criteria, appropriate support and regular review points (see appendices 1 and 2). Informal support will normally last for at least 6 weeks before formal capability is considered. The period may be longer where this is reasonable in the circumstances, including where adjustments, working patterns, school closure periods or the nature of the improvement required make a longer period

appropriate. A shorter period will only be used in the most serious cases and following HR advice. The 4 to 6 week periods referred to later in this policy relate to formal monitoring after a warning has been issued, not to this informal support stage.

1.12 If no, or insufficient, improvement has been made over this period, the process should move to the formal capability procedures.

2 Scope and purpose of this policy

2.1 The purpose of this policy is to provide a framework within the Federation of Westminster Special Schools which can work with staff members to improve and maintain satisfactory standards of performance where serious concerns have been raised, reflecting the ACAS Code of Practice on disciplinary and grievance.

2.2 This policy sets out the arrangements that will apply in serious cases where there have been persistent failures to meet job expectations, resulting in negative consequences on children and young people and the organisation.

2.3 It is important to recognise the difference between misconduct and lack of competence. Wilfully refusing to perform duties satisfactorily are acts of misconduct for which the FWSS disciplinary procedures should be used.

2.4 This procedure applies to all staff of the FWSS, where there is a capability issue that the appraisal process, including any informal support arrangements, have been unable to address.

2.5 In cases where a Headteacher / Head of Service / Senior Finance Officer is deemed to be performing unsatisfactorily, the Associate Executive Headteacher will consult with the HR provider before any action is taken.

2.6 Where this procedure may apply to a trade union or professional association official, or an accredited safety representative, the Federation will take particular care to ensure that action is not connected with, or used to undermine, their representative duties. The HR provider will be consulted before formal action begins and legal advice will be sought where appropriate. With the staff member's consent, an appropriate full-time official of the relevant trade union or professional association will be informed.

3 Capability procedure

3.1 Notification of a formal capability meeting should **never come as a surprise** to a staff member concerned.

3.2 **Informal support** and **a performance improvement plan** should mean that the staff member is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment.

3.3 At least **five working days' written notice** will be given of the formal capability meeting.

3.4 The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the staff member to prepare to answer the case at a formal capability meeting.

3.5 It will also contain:

- copies of any written evidence;
- copies of witness statements and details of witnesses attending (if appropriate);
- the details of the time and place of the meeting;

and will advise the staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

3.6 Staff members are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (which is within five days of the original date) as per Section 10 of Employment Relations Act 1999.

Notice, receipt and availability

Written notice may be delivered personally, sent by confidential email to the staff member's notified email address, or sent to their home address. A notice sent by email during a working day will normally be treated as received that day; an email sent outside working hours will normally be treated as received on the next working day. Postal notice will be treated as received in accordance with the delivery method used.

Where the staff member is on authorised leave, absent through sickness or otherwise unavailable, the Federation will make reasonable efforts to confirm receipt and accommodate availability. Notice periods may be extended by mutual agreement, without unreasonably delaying the procedure.

3.7 Pay progression will be withheld from the point at which a formal capability warning is issued, in accordance with the Federation Pay Policy. Informal support alone will not automatically prevent pay progression. If the staff member successfully completes the formal capability process, the pay progression decision will be reconsidered in line with the Pay Policy and Appraisal Policy. Any reconsideration will take account of the evidence and the relevant pay decision arrangements; progression is not automatic or retrospective unless the applicable policy determines otherwise.

4. Formal capability meeting (Stage 1)

4.1 If the Headteacher / Head of Service considers that there are serious performance concerns, the staff member will be invited to a formal capability meeting to establish the facts and give them the opportunity to respond before formal action is taken.

4.2 Headteacher / Head of Service will inform the Governors about the commencement of formal capability process.

4.3 It will be conducted by the School Headteacher / Head of Service or other suitable senior staff member.

4.4 The meeting sets out the **required standards** which are believed to have been failed by the staff member.

4.5 The staff member's line manager may attend the meeting to present the **management case**.

4.6 **Relevant witnesses** may be called by the person conducting the meeting. Such a request should be provided in writing at the point of notification with details of

why such a witness should be called. The person conducting the meeting shall determine who shall be called as a witness and may request a written statement is provided instead of attendance.

4.7 The meeting allows the staff member to **respond to concerns** about their performance and to **make any relevant representations**, with the option of being accompanied by a work colleague, union representative or an official employed by a trade union. Employees are entitled to request an alternative date which is within five days of the original date, which may be because their representative is unable to attend the meeting.

4.8 This may provide new information or a different context to the information/evidence already collected.

4.9 During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary.

4.10 The staff member shall be allowed to ask questions, present their own evidence and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.

4.11 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 such cases, the capability procedure will come to an end.

4.12 The person 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.

4.13 In other cases, the meeting will continue**.** During the stage 1 meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the **professional shortcomings**, for example which of the standards expected of teachers or support staff are not being met;
- allow the staff member to **respond to those concerns**, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
- find out if there are any **issues (both in or outside of work) that are affecting their performance** that need to be considered, including disability or health matters where reasonable adjustments to working arrangements or this procedure could be made;
- identify what **action (including support provided) has been taken to date** and what the outcome was;
- give **clear guidance** on the **improved standard of performance** needed to ensure that the staff member 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);
- explain any **support** that will be available to help the staff member improve their performance;

- set out the **timetable for improvement** taking into account the staff member's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case but in straightforward cases could be 6 weeks or a half term.

- explain how performance will be **monitored and reviewed**. (warn the staff member formally that failure to improve within the set period could ultimately lead to dismissal).

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

4.15 Where a warning is issued, the staff member 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 appealing against the warning.

4.16 Where a warning is issued at stage 1, this will usually be **a first written warning**. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure and there are still concerns, this could be **a final written warning**. The implications in relation to pay progression will be set out in writing.

4.17 The warning will normally remain active for 12 months from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on their personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

5. Monitoring and review period following a formal capability meeting

5.1 The formal monitoring and review period following a formal capability warning will normally be 6 weeks or half a term. This is separate from, and follows, the informal support period described above.

5.2 However, in some cases it may be appropriate for a shorter period of **four weeks** to be set. In exceptional circumstances, this period can be extended up to **a maximum of 10 weeks.**

5.3 **Formal monitoring, evaluation, guidance and support** will continue during this period. The staff member 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 (see below).

6. Formal review meeting (stage 2)

6.4 As with formal capability 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 staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

6.5 Whenever practicable, the letter must be handed to the staff member personally, delivered to the home address, or sent to that address by recorded delivery and first-class post. Additionally, the letter will also be sent as a confidential email.

6.6 Members of staff are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (a date that is within five working days of the original proposed date).

6.7 If the Headteacher/Head of Service conducting the meeting is satisfied that the **staff member has made sufficient improvement**, the capability procedure will cease, and the appraisal process will re-start.

6.8 In other cases:

- If some (but not sufficient) progress has been made it may be appropriate to **extend the monitoring and review period** up to a maximum of additional 4 weeks.

- If no, or insufficient, improvement has been made during the monitoring and review period, the teacher will receive **a final written warning** which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards.

6.9 As before, notes will be taken of formal meetings and a copy sent to the staff member.

6.10 The final written warning wording will mirror any previous warnings that have been issued.

6.11 Where a final warning is issued, the staff member 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** and the procedure and time limits for appealing against the final warning.

6.12 The staff member will be invited to a decision meeting.

7. Monitoring & Review Period (2)

7.1 At the end of the further monitoring and review period, staff member will be invited to a decision meeting.

7.2 Redeployment will be actively explored before a decision meeting where there is a suitable vacant role and it may provide a reasonable alternative to dismissal. A suitable role is one for which the staff member has, or could reasonably acquire, the required skills and experience, taking account of the duties, location, working pattern, contractual status and any reasonable adjustments. The Federation will identify relevant current vacancies, discuss them with the staff member and provide sufficient information for an informed decision. Redeployment is voluntary and requires the staff member's agreement; there is no requirement to create a post.

7.3 Where redeployment is agreed, the terms of the new role will be confirmed in writing. It will normally be a permanent contractual change. If the role is paid at a lower level, the lower salary will apply unless an applicable Federation or local authority policy expressly provides salary protection. The capability procedure will cease when the staff member starts the new role and the appraisal process will restart.

8 Decision meeting (Stage 3)

8.1 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 staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative.

8.2 Where a Headteacher / Head of Service intends to use documents in evidence, copies must be supplied to the staff member at the time of notification of the meeting.

8.3 Where the staff member intends to use documents in evidence, copies must be supplied to a Headteacher / Head of Service at least 3 working days prior to the decision meeting.

8.4 Where either party intends to use a signed statement of evidence from a person not being called as a witness, a copy of that statement must be sent to the other party and a Headteacher / Head of Service at least 3 working days prior to the decision meeting.

8.5 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 re-start.

8.6 If **performance remains unsatisfactory**, a decision (if in regard to a staff member), or recommendation to the Governing Board (if in regards to a Headteacher / Head of Service), will be made that the **final written warning should be extended** (where possible or appropriate), or the staff member should be **dismissed** or required to cease working at the school.

8.7 Redeployment into an alternative role may be considered where appropriate and possible.[1]

8.8 Before the decision to dismiss is made, the Headteacher / Head of Service will discuss the matter with the Chair of Governing Body and local authority (Westminster City Council). WCC LA representative may offer advice at all proceedings relating to the dismissal of any staff member, and the Governing Body must consider any such advice. The Governing Body might also consult HR Provider for support and guidance.

8.9 The staff member 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.

9 Decision to dismiss

The Federation schools are community special schools. Westminster City Council is the employer. The Governing Board, or a properly constituted panel acting under delegated authority, determines that a staff member should no longer work at the Federation. Westminster City Council then acts on that determination as employer and issues contractual notice.

The Headteacher / Head of Service, or an authorised senior leader, may conduct stages 1 and 2. A stage 3 decision that may result in dismissal will be taken by a governor panel with delegated authority whose members have had no prior involvement that would compromise impartiality. Where the procedure concerns a Headteacher / Head of Service, the Governing Board will appoint the appropriate governor panel and obtain HR and local authority advice.

10. Dismissal

10.1 Once the Governing Board or delegated governor panel has determined that a staff member should no longer work at the Federation, it will notify Westminster City Council in writing of the determination and the reasons for it.

10.2 Where staff members work solely at this federation, the local authority must confirm the governor's decision to dismiss them with notice within fourteen days of the date of the notification.

10.3 Where they work in more than one organisation, the local authority must require them to cease to work at the federation.

11. Appeal

11.1 If a staff member feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal

11.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

11.3 The same arrangements for notification and 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 staff member.

11.4 The appeal will be dealt with impartially and by a panel of governors who have not previously been involved in the case.

11.5 If a staff member is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, the staff member will be reinstated with no loss of continuity or pay.

11.6 The staff member will be informed in writing of the results of the appeal hearing as soon as possible.

11.7 Following the appeal hearing the panel may:

(a)confirm the original decision;

(b)revoke the original decision; or

(c)substitute a different penalty.

11.8 There is no further right of appeal against the sanction or dismissal within the Federation of Westminster Special Schools.

12. Principles Underlying

ACAS Code of Practice on Disciplinary and Grievance Procedures

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the school Headteachers and Head of Service and Governing Board to quality-assure the operation and effectiveness of the appraisal system.

The federation approach is that all appraisals are accessed by the School Headteachers and Head of Service and moderated to ensure consistency.

The School Headteacher / Head of Service might also wish to be aware of any pay recommendations that have been made.

Consistency of Treatment and Fairness

The Federation and Governing Board are committed to consistency, fairness and compliance with equality legislation, including the duty to make reasonable adjustments for disabled staff members.

Reasonable adjustments and equality considerations

At every stage of this procedure, including informal support, meetings, monitoring, review, decision-making and appeal, the Federation will consider whether reasonable adjustments are required for disabled staff members, including neurodivergent staff. The staff member will be invited to identify barriers and adjustments that may assist them. Adjustments may include changes to timescales, meeting format or location, communication methods, targets where appropriate, the nature of support, access to information, or the way performance is observed and monitored. The Federation will seek occupational health or other specialist advice where appropriate, while retaining responsibility for the final decision on reasonable adjustments.

The Governing Board is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

Wellbeing support during capability procedures

The Federation recognises that capability procedures may be stressful. Staff may access the support available under the Staff Mental Health and Wellbeing Policy, including the Employee Assistance Programme, occupational health and counselling or other confidential support where these services are commissioned. Access details will be provided by HR or the staff member's line manager. A staff member may also speak confidentially with HR, their trade union or professional association representative, or another agreed senior leader who is not making the formal decision. Managers will offer proportionate wellbeing check-ins during the process. Seeking or using wellbeing support will not, of itself, count against the staff member or determine the outcome of the capability procedure.

References

Where a reference request from a potential school employer requires disclosure, the Federation will disclose formal capability procedures within the period required by the applicable School Staffing Regulations and current staffing and employment guidance. Informal support that did not progress to formal capability will not be described as formal capability. The wording will be factual, accurate and limited to the information the Federation is legally required or entitled to provide, for example: "The employee was subject to formal capability procedures during [dates]; the procedure [remained ongoing / concluded with the following outcome]." The staff member will be informed of the information to be disclosed, subject to any legal restriction.

Staffing and employment advice for schools (publishing.service.gov.uk)

Definitions

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

Role of governors

The Headteacher / Head of Service will notify the Chair of Governors when formal capability begins. Governors will receive only the information needed to fulfil their governance, assurance or decision-making responsibilities, normally including confirmation that the process has commenced, assurance that the policy and HR advice are being followed, and anonymised monitoring information unless identifiable information is necessary for a formal decision. Governors who may hear a stage 3 case or appeal must not be involved in earlier consideration of the merits. Any actual or potential conflict of interest must be declared and managed by replacing the governor where necessary. Appeals will be heard by an impartial panel of governors who have not previously been involved in the case.

Delegation

Normal rules apply in respect of the delegation of functions by governing boards, headteachers and local authorities.

Grievances

Where a staff member 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, including as part of the capability process, it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the federation’s absence policy. (e.g. referred immediately to the occupational health service to assess the staff member’ health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures).

In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing board and headteacher/ head of service will monitor the operation and effectiveness of the federation’s capability policy.

This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

Documentation and record-keeping

A suitable person who is not presenting the management case will normally take notes of formal meetings. Draft notes will be shared with the staff member, who may identify

factual inaccuracies or submit comments within a reasonable period before the record is finalised. Where agreement cannot be reached, the staff member's written comments will be retained with the notes. Records will be stored securely, access will be limited to those with a legitimate need, and retention or deletion will follow the Federation Retention and Disposal Policy and data protection requirements. If capability is resolved successfully, the outcome will be recorded; records will not be rewritten or destroyed outside the applicable retention schedule, but expired warnings will be disregarded for future capability decisions as set out in this policy.

Retention The governing board and headteacher / head of service will ensure that all written capability records are retained and stored in a secure place in line with their Retention and Disposal Policy.

Related policies

Appraisal Policy

Pay Policy

Disciplinary Policy

Supporting Employee Health Policy

Staff Wellbeing Policy

Equality Policy

Retention and Disposal Policy

Appendix 3: Capability procedure at a glance

Informal support Clear concerns, support, objectives and review points. Normally at least 6 weeks. ↓
Decision point Sufficient improvement: return to normal appraisal. Insufficient improvement: consider formal capability. ↓
Formal capability meeting - Stage 1 Evidence considered. First or final written warning may be issued. Formal monitoring normally 6 weeks / half term. ↓
Formal review meeting - Stage 2 Sufficient improvement: capability ends. Some progress: limited extension may be agreed. Insufficient improvement: final written warning and further monitoring. ↓
Decision point Sufficient improvement: capability ends. Otherwise: actively consider suitable voluntary redeployment before dismissal determination. ↓
Decision meeting - Stage 3 Governor panel determines outcome under delegated authority. Outcomes may include an extension where appropriate, redeployment by agreement, or a determination that employment at the Federation should end.

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Appeal Written appeal within 5 working days. Heard by an impartial governor panel with no previous involvement.