

Model Teacher Capability Policy and Procedure

Applicable to all community and voluntary controlled schools (where WCC is the employer) and voluntary aided, foundation and academy schools participating in the Warwickshire Consultation Framework.

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The Governing Body of (insert name) School adopted this policy on (insert date)

Teacher Capability Policy and Procedure

1. Principles Underlying This Policy

ACAS Code of Practice on Disciplinary and Grievance Procedures: The Capability procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality: All matters, including written records, relating to the application of the capability procedure will be treated as confidential by all parties concerned except where it is necessary to notify or involve other parties in order to meet legal or regulatory requirements.

Consistency of Treatment and Fairness: The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

This Policy is to be used in conjunction with the School's Appraisal Policy, see section outlining the 'Teachers Experiencing Difficulty' process which acts as informal capability process. This procedure applies once the 'Teachers Experiencing Difficulty' process has been exhausted.

2. Purpose And Application

Governing Bodies are required by law to establish procedures for dealing with lack of capability on the part of staff at the school (The School Staffing (England) Regulations 2009) and amended in 2012 by the School Staffing (England) (Amendment) Regulations.

Good management, clear expectations and appropriate support go a long way towards addressing weaknesses in performance. This Governing Body recognises the need to facilitate professional development for teachers throughout their careers and that as much support and help as appropriate should be given to teachers who experience difficulties. Early identification of problems through performance appraisal carried out in a constructive and supportive way will help to avoid the need for formal capability procedures. Also, as the concerns will have been discussed with the teacher as part of the appraisal process, the need and reason for transition to the capability procedure should not come as a surprise to the teacher.

This model policy and its associated procedure, which have been developed for Governing Bodies to adopt, apply to teachers or head teachers about whose performance there are serious concerns which the appraisal process has been unable to address. There may, however, be circumstances in which it is necessary to invoke the capability policy without going through the appraisal procedure, for example if a capability issue arises from a disciplinary process.

The application of these procedures only relates to the employment of an individual as a teacher in this school.

This policy does not apply to non-teaching staff in schools, as separate capability procedures will be in place.

This document must be operated in conjunction with the separate Guidance to Capability Procedure for Teachers.

This policy has been agreed with Warwickshire's teaching unions/associations.

3. Roles And Responsibilities

3.1. Headteacher

Responsibility for initiating, and the subsequent operation of, the capability procedure for teachers lies with the Headteacher, following consideration of a recommendation by an appraiser. The Headteacher will make a recommendation to the Governing Body to dismiss. *(*School to insert alternative arrangements if different from this).*

3.2. Governors

Governors would not normally be involved in the capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in hearing an appeal against a warning or in a capability procedure against a Headteacher. It is important to be prepared for the possibility of dismissal. The use of governors to hear grievances or appeals against warnings should ideally be limited to ensure enough impartial governors remain available for the dismissal and dismissal appeal panel. Depending on the school's arrangements for the delegation of authority to dismiss, three governors are required for the dismissal appeal panel*.

(In this school, the authority to dismiss rests with the Governing Body, as delegated to a Governors' Dismissal Panel. Where a dismissal is determined, the Governing Body of a community, voluntary controlled or maintained nursery must notify the Local Authority in writing of its determination and the reasons for it.)*

**School to insert its own delegation arrangements if different from the above)*

3.3. Appraiser

Where the Headteacher has delegated the appraisal process to an appraiser, that person will be responsible for the appraisal process up to the transition to capability procedure. The appraiser will be responsible for making a recommendation to the Headteacher that a teacher should be moved into the capability procedure, by submission of a written report. The appraiser will be required to submit information/evidence at a formal capability meeting.

3.4. The Local Authority

The Local Authority (LA) is the employer of staff employed in community, voluntary controlled, community special and maintained nursery schools. The LA has the right to attend and offer advice at proceedings relating to the dismissal of a teacher.

Where the LA is the employer, it is responsible for terminating the person's contract. The LA may offer advice to the Governing Body of a voluntary aided or foundation school where such an agreement has been made.

Where the school does not follow the LA employment advice, it is likely to be liable for the costs associated with dismissal.

3.5. WES HR Advisors (where relevant):

- provide general advice on the application of the policy
- liaise with colleagues across the Council's HROD, Legal, and Education services to provide an integrated approach to promote excellent people management in schools
- offer a range of personalised support on a buy as you need basis where more detailed and specific advice is required to manage a particular case.

4. Procedure

4.1. Formal capability meeting

At least 5 working days' notice in writing will be given of the formal capability meeting. The notification will contain sufficient information on the concerns about the teacher's performance, including copies of any written evidence, and their possible consequences to enable the teacher to prepare to respond. The notification will include details of the date, time and place of the meeting and the right to be accompanied by a trade union representative or work colleague. The notification will also include a copy of this policy and procedure document, which signifies initial entry into the capability procedure.

The meeting is intended to establish the facts. It will be conducted by the headteacher (for teacher's capability meetings) or the Chair of Governors (for headteacher capability meetings) (*schools to insert any alternative arrangements*).

An employee has the right to be accompanied and supported at each formal stage of the procedure where action may be taken (including appeal), by a fellow employee or an accredited Professional Association / Trade Union Representative and no-one else.

The meeting allows the teacher, accompanied by a companion if they wish, 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/evidence already collected. Details of support and help provided during the appraisal process will also be shared at the meeting.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the matter through the capability procedure, or that it is inappropriate to use the procedure and that it would be more appropriate to address the concerns through the appraisal process or some other process (e.g., ill-health, counselling). In such cases, the capability procedure will come to an end. 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.

In other cases, the meeting will continue. During the meeting the person conducting it will:

- identify the professional shortcomings (for example which of the relevant teachers' standards are not being met)
- review any support that has already been given
- provide clear guidance on the improved standard of performance needed
- give specific objectives for improvement to ensure that the teacher can be removed from formal capability procedures (objectives set should be SMART, focusing on the specific weaknesses that need to be addressed)
- clarify appropriate success criteria and evidence to be used to assess whether or not the necessary improvement has been made
- identify and explain any support that will be available to help the teacher improve their performance over the following weeks (see Appendix 1)
- set the timetable for improvement and explain how performance will be monitored and reviewed (the timetable will depend on the circumstances of the individual case but will normally be between 6 – 10 working weeks - it is for the school to determine the set period, which should be reasonable and proportionate, but not excessive to allow sufficient opportunity for any improvement to take place - only in exceptional and evidenced circumstances would a timescale of 4 weeks be appropriate)
- where possible, agree a date for the next / final review meeting
- warn the teacher formally (verbally and then in writing) that failure to improve within the overall set period could lead to dismissal (in very serious cases, this warning could be a final written warning)
- confirm that the formal capability procedures have commenced and ensure that a copy of the capability policy and procedure has been issued.

An outcome letter will be sent to the member of staff, within 5 working days' of the meeting, covering the main points discussed and will include the following where a formal warning is issued:

- nature of the unsatisfactory performance
- standard(s) expected (relating to the relevant teachers' standards)
- specific objectives for improvement and success criteria
- support to be given
- arrangements and timescale over which the performance will be monitored and reviewed
- failure to reach and maintain the standard(s) of performance may lead to dismissal
- procedure and time limits for appealing against the warning.

4.1.1. Monitoring and review period following the formal capability meeting

A monitoring and review period (normally of between 6-10 weeks, depending on the circumstances,) will follow the formal capability meeting. Only in exceptional and evidenced circumstances would a timescale of 4 weeks be appropriate. Formal monitoring, evaluation, guidance, and support will continue during this period. At the end of this period, the member of staff will attend 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 4.3).

4.2. Formal review meeting

At least 5 working days' notice will be given, in writing, giving details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a trade union representative or work colleague.

The purpose of the meeting is to review the teacher's progress against the teachers' standards expected, objectives set and success criteria, as outlined at the capability meeting.

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 re-start. If the person conducting the meeting is satisfied that some progress has been made and there is confidence that further progress will be made to reach the required standard, 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 teacher will receive a final written warning.

An outcome letter will be sent to the member of staff, within 5 working days' of the meeting, covering the main points discussed and confirming the outcome of the meeting and will include the following where a formal warning is issued:

- The nature of the unsatisfactory performance
- The standard(s) expected (relating to the relevant teachers' standards)
- The specific objectives for improvement and success criteria
- The support to be given
- The arrangements and timescale over which the performance will be monitored and reviewed
- That failure to reach and maintain the standard(s) of performance may lead to dismissal
- The procedure and time limits for appealing against the warning/final warning

4.2.1. Monitoring and review period following the formal review meeting

A monitoring and review period (normally of between 6 – 10 weeks, depending on the circumstances) will follow the formal review meeting. Only in exceptional and evidenced circumstances would a timescale of 4 weeks be appropriate. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of this period, the member of staff will be invited to a decision meeting (see 4.3).

4.3. Decision meeting to consider dismissal

At least 5 working days' notice in writing will be given and 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 trade union representative or work colleague and of the possibility that dismissal may be an outcome.

At the decision meeting, the Headteacher (or Chair of Governors in the case of a headteacher) will consider if an acceptable standard of performance has been achieved during the monitoring and review period and will provide the opportunity for the teacher to comment and make any relevant representations. Where, having considered all the evidence and the teacher's (or Headteacher's) representations, the Headteacher (or Chair of Governors) determines that an acceptable standard of performance has been achieved, the capability procedure will end, and the appraisal process will re-start.

Where the Headteacher (or Chair of Governors) determines that performance remains unsatisfactory, and there is no evidence or significant reason to agree an extension of the monitoring and review period, they will normally suspend the teacher (or Headteacher) and will refer the matter for consideration by a Governors Dismissal Panel, with a written recommendation that the teacher (or Headteacher) be dismissed or be required to cease working at the school.

In certain circumstances, and as an alternative to a recommendation to dismiss, an agreement to redeploy into a different role either within or without the school and/or a reduction of responsibility may be made.

Confirmation of the suspension and decision to recommend dismissal will be confirmed in writing within 5 working days' of the meeting.

Before convening the Governors Dismissal Panel, the Headteacher (or Chair of Governors) may find it helpful to consult with the LA.

4.4. Governors Dismissal Panel

A meeting of the Governors Dismissal Panel will be convened as soon as possible after the decision meeting. All parties should be given a minimum of 5 working days' written notice and shall include the written recommendation with copies of any reports, documents and evidence to be considered at the hearing.

Before any decision to cease working in a community/voluntary controlled school is taken, the school will consult the LA.

The Headteacher will attend to present the case and the teacher has the right to attend and be accompanied by a trade union representative or work colleague. A representative from the LA has the right to attend and offer advice. In voluntary aided/foundation schools, a representative from the LA may offer advice, where such an agreement has been made.

The details of the case are confidential and must not be discussed with a party not involved in the hearing.

The employee will be notified in writing of the decision by the Governors Dismissal Panel within 5 working days' of the Panel meeting and be notified of the right of appeal. The dismissal notice will be issued in accordance with Section 4.5 Dismissal.

Before the governors' decision is transmitted to the LA, the teacher must be given the opportunity to appeal against the decision. (See 4.6 Appeals).

4.5. Dismissal

4.5.1. Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only:

Once the Governing Body (or Governors Dismissal Panel) has decided that the teacher should no longer work at the school, it will notify the LA of its decision and the reasons for it. This will be confirmed by the Governing Body in writing.

Where the teacher works solely at this school, the LA will issue formal written notice of termination of employment to the teacher within 10 working days' of the date of the notification from the Governing Body, in accordance with the School Staffing (England) Regulations 2009 (as amended). Contractual dismissal dates will be recognised in terminating the teacher's employment (see 7 Notice Periods).

4.5.2. Voluntary Aided, Foundation and Foundation Special schools only:

Once the decision to dismiss has been taken, the Governing Body (or Governors Dismissal Panel) will dismiss the teacher with appropriate notice. This will be confirmed in writing. Contractual dismissal dates will be recognised in terminating the teacher's employment (see 7 Notice Periods).

4.6. Appeals

4.6.1. Appeal against a warning

If a teacher feels that a decision to issue a warning is wrong or unjust, they may appeal in writing against the decision within 5 working days' of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a trade union representative or work, colleague will apply as with formal review meetings and notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by an appropriate manager or governor who has 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.

4.6.2. Appeals against decision to dismiss

If a teacher feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 5 working days' of the decision, setting out at the same time the grounds for appeal.

Appeals against a decision to dismiss will be heard by an appeals panel, comprising no less than 3 members of the Governing Body, who have not previously been involved in the case.

5. Recurrence of concern about performance

Improvements in teachers' performance must be sustained. In cases where, having improved to a satisfactory standard, they subsequently fall to unsatisfactory, a decision will need to be taken about what further action should be taken and what stage in capability procedure should be commenced. Normally, there will be 2 options:

- Where a teacher's performance has improved such that they have exited the capability procedure, only for the same performance concerns to re-emerge and be identified (through the appraisal process) within a subsequent 2-year period, it is recommended that the teacher capability procedure be re-entered at the point at which originally exited.

- Where a teacher's performance has improved such that they have exited the capability procedure, only for different performance concerns to emerge (through the appraisal process), it is recommended that the teacher capability procedure be entered at the beginning.

6. References

In accordance with an amendment to the School Staffing (England) Regulations, there is a duty on schools to provide (on request), to a prospective Governing Body employer, details about whether

that teacher has been subject to capability procedures in the preceding 2 years. They must provide details of the concerns which gave rise to this, the duration of the proceedings and their outcome.

7. Notice periods

In accordance with the Burgundy Book, (with the exception of gross misconduct), a teacher's contract can only be terminated at the end of a school term defined as 31st December, 30th April and 31st August respectively. All teachers are entitled to be given a minimum of 2 months' notice (3 months in the summer term). For Headteachers, the notice period is a minimum of 3 months (4 months in the summer term). If a teacher has been continuously employed for more than 8 years, the notice period must be extended by one week for each year of service, to a maximum of 12 weeks.

Guidance: Teacher Capability Procedure

This guidance accompanies the capability policy and has been written to help schools (Headteachers and Governing Bodies) deal fairly, in a constructive and supportive way and in accordance with good employment practice, with teachers who, having exhausted the appraisal process, continue not to meet the required standard of performance.

Good management, clear expectations and appropriate support go a long way towards addressing weaknesses in performance. Early identification of problems and the implementation of effective support and development to address these through performance appraisal will help to avoid the need for formal capability procedures. Also, as the concerns will have been discussed with the teacher as part of the appraisal process, the need and reason for transition to the capability procedure should not come as a surprise to the teacher.

1. Application

The capability procedure applies to teachers, including Headteachers. It does not apply to non-teaching members of school staff (e.g. teaching assistants, admin, premises staff) who are covered by different arrangements (see appropriate school policies).

2. Definition

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

Capability refers to an individual employee’s ability to perform the work expected of them to the required standard. Where concerns emerge with an individual’s performance, it is essential that these are addressed immediately as part of the on-going appraisal process. Both the employee and the school must understand their responsibilities in achieving an improvement in performance to the required standard(s) and the prime objective of the appraisal process is to improve an individual’s performance. Only where the appraisal process has not achieved the necessary improvement in performance, should the capability process be commenced.

The capability procedure is not intended to be used where poor performance is the result of carelessness, wilful neglect of duty, deliberate failure to carry out reasonable directions or other such actions that are considered as misconduct. These cases should be considered as potential disciplinary matters and be dealt with under the school’s misconduct procedures. The capability procedure is not intended to be used where concerns arise as a result of ill-health or disability-related illness. Such cases should be considered under the school’s ill-health procedures/ sickness absence policy, as appropriate.

Examples of concerns constituting capability:

- Serious and persistent failure to undertake planning with appropriate objectives to promote good progress by pupils.
- Consistently ineffective management of pupil behaviour resulting in poor outcomes for pupils and/or an unsafe learning environment.

Examples of concerns constituting misconduct:

- Breach of confidentiality e.g. commenting about a work related incident on a social networking site.
- Failure to safeguard information related to pupils and/or families.

3. Roles and Responsibilities during the Capability Procedures

3.1. The Headteacher

Only the Headteacher will determine whether the capability procedure should be initiated (for teachers) and they will operate the procedure. In operating the capability procedures, the Headteacher may wish to call in the services of an appropriate independent education professional who can advise on the appropriateness of the procedures, on observing the teacher's practice against the standards or on appropriate support strategies/activities that could be provided for the teacher. The school may wish to develop a bank of such individuals, who might be drawn from the LA, ex-LA officers, Headteachers, subject leaders, middle managers, independent providers etc.

3.2. The Governing Body

Members of the Governing Body have key roles in the operation of the capability procedures for teachers at the appeal stages and the dismissal hearing. Governors should therefore remain mindful of the need not to prejudice their position in such proceedings. To safeguard governors' impartiality, it is essential that any information provided by the Headteacher to governors about members of staff under the capability procedure is strictly controlled and provided on a need-to-know basis only. Whilst in reporting to governors it may be judged necessary to specify the name of an individual member of staff, detailed information should not be given, nor should discussion take place on the matters of concern. Any such report by the Headteacher should be recorded as a confidential item in the minutes.

When applying these procedures, the Headteacher will have made professional judgements, taking advice as appropriate, as the lead professional in the school. Consideration by governors serving on the relevant panel should relate to whether the action taken by the Headteacher is reasonable and is supported by appropriate evidence and is a decision that another Headteacher, acting with proper regard to his/her responsibilities, could have chosen to take. Governors should also consider whether these procedures have been correctly applied.

N.B. The School Staffing (England) Regulations 2009 have been amended so that, where a teacher at a school applies for a teaching post at another school (maintained or academy), the Governing Body of the outgoing school must inform the Governing Body of the receiving school if the member of staff has been subject to capability procedures in the preceding two years, if so requested. The Governing Body must provide written details of the concerns which gave rise to the procedures, their duration and the outcome (ref: the School Staffing (England) (Amendment) regulations 2012).

3.3. Professional Association / Trade Union representative or work colleague:

The representative's role is to:

- familiarise themselves with the case
- assist the employee in preparing for the case
- confer with the employee before and after the hearing
- present and sum up the employee's case, as agreed with the employee
- address the hearing and ask appropriate questions, as agreed with the employee
- respond on the employee's behalf to any view expressed at the hearing
- ask for adjournment if necessary.

The Professional Association / Trade Union representative or work colleague is not permitted to:

- answer questions on behalf of the employee
- address the hearing if the employee indicates that they do not wish them to do so
- prevent the school from explaining the case
- prevent any other person at the hearing from making their contribution

Internal school Professional Association / Trade Union representatives or a work colleague are entitled to paid time off during normal working time to fulfil this responsibility, which includes time for preparation of the case as well as to attend the hearing. This should be agreed with the Head teacher.

The employee should provide the name of their representative in advance. If the chosen representative is unavailable at the time of the hearing, the employee may request a postponement (once) to a time that is convenient to all parties within a reasonable timescale not normally exceeding 5 working days'.

An employee will not be subject to any detriment by the employer for having acted as a companion in proceedings.

4. Transition from Appraisal to Capability

As stated in Warwickshire's model Teacher Appraisal Policy, if, during the appraisal period and following review of progress, no or insufficient improvement has been made, the appraiser will inform the teacher of this. Written confirmation will be provided (within 5 working days') to the teacher, covering the concerns, actions taken, review outcomes and recommendations and a copy of this confirmation will be sent to the Headteacher (or Chair of Governors if the Headteacher), for him/her to determine whether the capability procedure will commence. The capability procedure will commence only if it is deemed necessary and where, following exhaustion of the appraisal process and any relevant and appropriate support mechanisms, the teacher continues not to meet the expected standards of performance.

Only the Headteacher will determine whether the capability procedure will commence, and they will inform the teacher of the decision, in writing, within 5 working days' of receipt of the appraiser's recommendation

Where the Headteacher determines that a teacher should move into the capability procedure, the Headteacher will notify the teacher in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure. The letter will invite the teacher to the first formal capability meeting.

At least 5 working days' written notice of the meeting will be given and will include the time and venue and the right to be accompanied at the capability meeting by a trade union representative, or work colleague. Copies of any evidence, reports etc will be included in the notice. A copy of the Capability Policy will also be included, as this signifies the commencement of the formal capability procedure.

The reasonableness of the timing for the meeting will be considered.

Case study demonstrating the need to make the transition from appraisal to capability.

- *Serious and persistent poor management of behaviour, inappropriate pace, and inability to motivate pupils has previously been identified as an area for improvement in an appraisal objective. Despite opportunities to shadow colleagues and to attend training on understanding and managing behaviour, there is serious underperformance which the appraisal process has been unable to address and there has been no sustained improvement when practice observed. NASUWT*

At any stage in the Capability Procedure, there is nothing to prevent any party to the proceedings from putting forward alternative suggestions for an exit strategy for the teacher (or Headteacher) and any reasonable alternative should be considered.

5. Formal capability meeting - 1st meeting (4.1 in Procedure)

The Headteacher must conduct this meeting for teachers and not delegate this to other members of staff. It is recommended that the Chair of Governors conducts this meeting for Headteachers,

The main objective of this meeting is to assist, and identify support for, the teacher (or Headteacher) to perform at the required standard but at the same time making clear the implications of failing to improve to the standard required, including the possibility of dismissal, within a specified period. The standards to which the teacher is required to perform will be the appropriate Teachers' Standards, unless otherwise identified. Examples of support mechanisms and activities are given in Appendix 1.

At the meeting, it will also be important to gain an understanding of any personal circumstances that may be impacting on the teacher's ability to meet the necessary standards.

Where further information or further investigation is required, or where more time is needed in which to consider any additional information, the meeting may be adjourned for an appropriate length of time to allow this to happen.

If there is new information, a different perspective on the information collected or further investigation suggests that the matter is not as serious as it first seemed, it may be appropriate to drop the matter or go down a different route (e.g. counselling).

However, where the capability meeting continues:

- A record will be made of the meeting, which will include the concerns about performance, the improvements required to meet the necessary standard(s), any objectives or targets set, any support and assistance to be provided, agreed monitoring and review arrangements, the criteria against which improvements will be judged and the timescale for the achievement of improvements. The record will also include any views advanced by the teacher (or Headteacher) or their trade union representative, or work colleague whether these were rejected by the Head /Chair of Governors, and reasons for their rejection.
- Objectives / targets for improvement should be reasonable and should include demonstration of how they could be achieved.
- A copy of the record will be supplied to the teacher along with (if so determined) written confirmation of a warning that failure to improve within the set period could lead to a final warning and ultimately dismissal. This should be issued within 5 working days'.
- The right to appeal against the warning will also be included in the letter.

A template for recording the outcome from the meeting is attached at Appendix 3.

6. Timescales for improvement - monitoring and review periods (4.1.1 / 4.2.1 in Procedure)

The timescales for review periods will depend on the circumstances of each case. The period set should be reasonable and proportionate in all cases, not excessively long, and provide sufficient opportunity for an improvement to take place. The range of the review period will normally be between 6 to 10 weeks. In exceptional circumstances, a review period of 4 weeks may be set. For example, where an individual is in denial that their teaching standards are unsatisfactory or refuses to co-operate with the support activities identified, it may be necessary to set a short timescale such as 4 weeks to achieve the necessary acceptance.

A longer timescale may be appropriate where educational practice needs to change, requiring specific development, shadowing and practice.

7. First monitoring and review period (4.1.1 in Procedure)

During the period of review, the teacher's (or Headteacher's) performance should be monitored and assessed as frequently as appropriate. Monitoring should include observations of a range of relevant duties and functions and an objective record of the monitoring should be kept and used to assist with the evaluation of performance. Any programme of support will continue during this period. Interim feedback should be given about progress against the improvements required. Good practice would be to offer initial immediate feedback but to follow this up with considered verbal feedback, supported in writing, within a reasonable timeframe (for example within 3 working days').

8. Formal review meeting - 2nd meeting (4.2 in Procedure)

At the end of the review period, a review meeting will take place. If not previously confirmed in writing, at least 5 working days' written notice will be given, including the time and venue and the right to be accompanied at the meeting by a trade union representative or work colleague. Copies of any evidence, reports etc., will be included in the notice.

The Headteacher will conduct the meeting for teachers (usually, the Chair of Governors will conduct the meeting for the Headteacher).

The person conducting the meeting will consider all the evidence presented, together with any views advanced by the teacher (or Headteacher) or his/her trade union representative or colleague and determine whether an acceptable standard of performance has been achieved. If so, the capability procedure will end, and the teacher (or Headteacher) will move back into the appraisal cycle. A written record will be made of the meeting and the outcome. Written confirmation will be sent to the teacher within 5 working days', with a copy of the record.

Where insufficient or no improvement in performance has been made during the review period, a final written warning will be issued that failure to achieve an acceptable standard of performance within the next review period may result in dismissal. A record will be made of the meeting, including on-going concerns about performance, any improvements so far made, any further support and assistance proposed, monitoring arrangements, the criteria against which improvements will be judged and the timescale for the achievement of improvements. The record will also include any views advanced by the teacher (or Headteacher) or his/her trade union representative or work colleague whether these were rejected by the Head /Chair of Governors, and reasons for their rejection.

A copy of the record will be issued to the teacher along with the final written warning. This should be issued within 5 working days'.

The right to appeal against the warning will also be included in the letter.

9. Second monitoring and review period (4.2.1 in Procedure)

During the next review period, the teacher's (or Headteacher's) performance should continue to be assessed as frequently as appropriate. The timescale for the review period will be at least between 4– 10 weeks. Any programme of support will continue during this period. Interim feedback should be given about progress against the improvements required.

10. Decision meeting (4.3 in Procedure)

At the end of the 2nd review period, a decision meeting will take place at which dismissal may be the outcome if the teacher's performance remains unsatisfactory following the review period. At least 5 working days' written notice will be given and will include the time and venue and the right to be accompanied by a trade union representative or work colleague. Copies of any evidence, reports etc., will be included in the notice.

The Headteacher will conduct the meeting for teachers. The appropriate Governing Body member or panel will conduct the meeting for the Headteacher. (See 13 Delegation of Authority to Dismiss).

The person conducting the meeting will consider all the evidence presented, together with any views advanced by the teacher (or Headteacher) or his/her trade union representative or work colleague and determine whether an acceptable standard of performance has been achieved. If so, the capability procedure will end, and the teacher (or Headteacher) will move back into the appraisal cycle.

Where the Headteacher conducts the meeting and considers that the teacher's performance remains unsatisfactory, and depending on the delegation of authority to dismiss (see 13), they may decide:

- a) that the teacher should be dismissed (if holding delegated authority) or
- b) to recommend to the Governing Body's dismissal panel that the teacher should be dismissed. This will require a further meeting to be held, at which the recommendation will be presented to the dismissal panel by the Headteacher and the teacher will be invited to attend (see below "delegation of authority to dismiss").
- c) As an alternative to dismissal, offer redeployment to a different post within the school, if available. If on a lower grade, there will be no entitlement to salary protection. Redeployment may be to a post of reduced responsibility. Again, salary protection would not apply.

In the case of a Headteacher's performance, the Governing Body panel or member will conduct the meeting and determine whether the Headteacher's performance remains unsatisfactory and whether s/he should be dismissed.

11. Process for dismissal hearing (4.4 in Procedure)

During the period between the decision to dismiss (or to cease working at the school) and the actual dismissal date, consideration will need to be given as to whether or not the teacher should remain at work. For example, it may be inappropriate for the teacher to remain in a teaching post but they may be able to work in a non-teaching post or undertake work at home. It is recommended that a discussion takes place about how best to manage this according to the circumstances of the case. Normal pay will normally be paid during this period.

Where the decision to dismiss has not been delegated to the Headteacher, the Headteacher will present their recommendation to a meeting of the Governing Body's dismissal committee that the teacher should be dismissed, and include copies of all relevant documentation, evidence, notes of meetings, etc.

This meeting should be convened within as reasonable time as possible (no longer than 10 working days') from the date of the decision meeting. The teacher should be given 5 working days' written notice of the meeting and copies of all relevant documentation should be provided.

The teacher will be invited to be present at the meeting, which will be a dismissal hearing and will be conducted in accordance with the dismissal stage in the disciplinary procedure. The teacher has the right to be accompanied by a trade union representative or work colleague. The meeting will not be a re-run of the final review meeting, but it will give the teacher the opportunity to make comment about the recommendation made and give the Headteacher the opportunity to counter-comment. The panel must be in possession of all the facts to make a reasonable decision.

12. Dismissal (4.5 in Procedure)

Dismissal for reasons of capability will be in accordance with statutory and contractual notice. Although the governing body has responsibility for determining dismissal, the making of such a decision should be approached with great care and after consulting the LA and (where purchased) seeking the advice from the WES HR Advice team.

(In community, VC, community special and maintained nursery schools) a representative of the LA has the right to attend and offer advice at all of the proceedings of the Governing Body relating to dismissal. The Governing Body has a duty to consider any such advice before reaching a decision.

(In Foundation and VA schools), the LA may offer advice to the Governing Body, if so, agreed by the Governing Body, and it must consider this advice.

Dismissal of staff can lead to Employment Tribunal hearings. Normally the LA would incur any tribunal costs arising but where firm advice has been given that a dismissal decision would be unfair, or where these procedures have not been followed and no advice has been sought from the LA, tribunal costs could be charged against the budget of the school involved.

If a decision is taken that dismissal is the appropriate sanction, where the Local Authority (LA) is the employer, the Governing Body must notify the LA in writing of the decision to dismiss and the reasons for it. The LA will then issue the dismissal notice, taking account of the relevant notice periods, in writing within 10 working days' of such notification, in accordance with the School Staffing (England) Regulations 2009.

Where the Governing Body is the employer (in, for example, voluntary aided or foundation schools), the Governing Body will issue the dismissal notice to the teacher and the reasons for it, taking account of relevant notice periods.

In all cases, the Headteacher / Governing Body must also notify its payroll provider of the decision.

Where a Governing Body has delegated the authority to dismiss a teacher to the headteacher, the Headteacher makes that decision but will be required to inform the Governing Body of that decision, including making a report of the case.

13. Delegation of authority to dismiss

The Governing Body of a school can delegate the determination to dismiss a member of staff to

- a) The Headteacher
- b) One or more governors
- c) One or more governors together with the Headteacher

However, a decision to delegate to the Headteacher should be approached with caution, as the Headteacher will have been involved in all stages up to the decision to recommend dismissal and is likely to be too close to the case to be able to make an impartial judgement. In the interests of natural justice and fairness, it is recommended that the determination to dismiss is taken by a separate body, ie, a Governing Body Panel.

14. Appeals against warnings (4.6.1 in Procedure)

At all stages of the capability procedure, there will be a right to appeal. Appeals will be heard by a person(s) not involved in the original decision and will, thus, preclude the Headteacher. Normally, an individual governor (previously uninvolved) will hear an appeal. It is preferable that a governor hearing an appeal will not be involved in a subsequent stage of the procedure. However, previous involvement does not necessarily mean that a governor is tainted and thereby ineligible to serve on

a dismissal or dismissal appeal panel. Nevertheless, it will be important to demonstrate that genuine attempts have been made to identify a person(s) not previously involved and that an appeal decision has been made objectively.

Teachers (and Headteachers) will be given 5 working days' in which to lodge their appeal and will be notified in the warning letter of the timescale and to whom to send their appeal, stating their reasons for appeal. The appeal should be heard within a reasonable timescale.

Appeals will normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, any procedural irregularities, or any discriminatory procedures. An appeal decision will be final. Where an appeal is upheld, the matter should be referred to the person making the original decision to be reconsidered or further appropriate action.

Monitoring the teacher's (or Headteacher's) performance may be halted while an appeal is pending.

15. Appeal against a decision to dismiss (4.6.2 in Procedure)

There is a right of appeal against a decision to dismiss a teacher (or Headteacher). The appeal will be heard by an appeals panel, comprising no less than 3 members of the Governing Body, who have not previously been involved in the case. The principles in the section above (Appeals against warnings) shall be followed. The appeal will not take the form of a re-hearing of the evidence. The Governors appointed to hear the appeal may allow further evidence to be submitted to the hearing but will only do so where there is good reason why evidence was not available at the original hearing.

The appeal does not have to be heard before the original decision to dismiss is actioned. If the employee is successful at appeal, they will be re-instated where this is agreed by the employee.

16. Staff absent through illness during the procedure

Cases of absence that are triggered by action under these procedures and which the head teacher believes may be long term should be referred to the Occupational Health Service for assessment of whether the member of staff is fit for continued employment and the appropriateness or otherwise of continuing with the capability procedures. In some cases, it may be appropriate for the procedures to continue during a period of sickness absence. Advice about this should be sought from the school's HR provider.

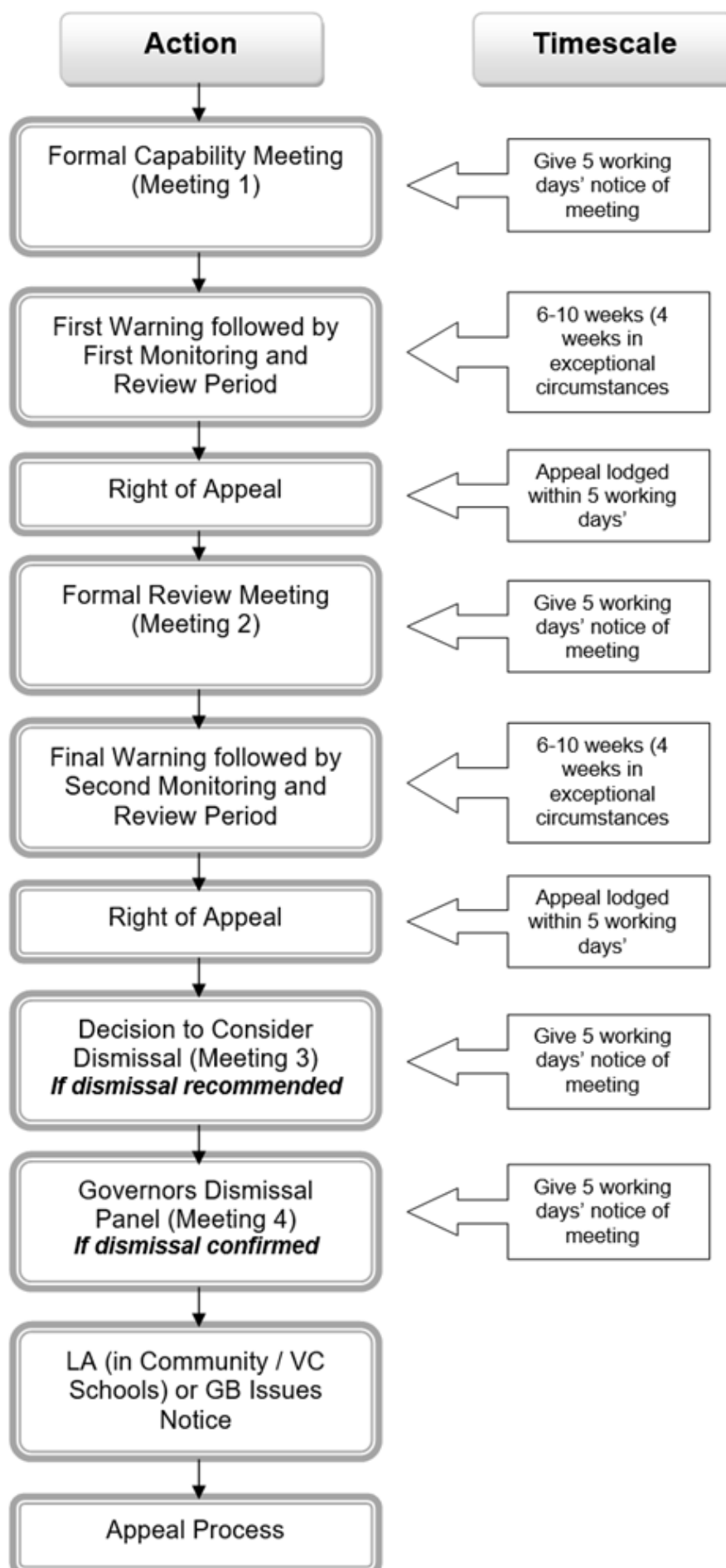
Advice should be sought from the HR provider prior to any decision to proceed with a meeting required under these procedures in the absence of the member of staff concerned.

Where a member of staff is diagnosed as having a medical condition which is covered under the Equality Act 2010, consideration will need to be given, including at the point of any action under this procedure, to 'reasonable adjustments' which may be necessary to enable them to achieve the satisfactory performance of their duties and responsibilities.

17. Grievances

In some circumstances, a member of staff may raise a grievance about the behaviour of the Headteacher or other senior member of staff during this procedure. Where this relates to the management of the procedure or the exercise of a role within the operation of the procedure, and depending on the circumstances, it may be appropriate to suspend the procedure whilst the grievance is considered. Such a delay should only be considered where there is strong evidence that the member of staff has grounds for a grievance. It should also be considered whether there is an option to continue the capability procedure through a responsibility being transferred to another senior member of staff. If appropriate, the capability and grievance case may be dealt with concurrently and the capability process may continue within the same timescale.

Capability Procedure Flowchart (the stages are not necessarily sequential)



Appendices

Appendix 1 - Examples of activities/support mechanisms to help improve performance and help teachers meet the Teacher Standards

Where a teacher has been experiencing difficulties in the performance of their duties and responsibilities and in meeting the teacher standards, this will have been brought to their attention during the appraisal process. During this process, areas for improvement and strategies to support and assist the teacher to make the necessary improvement should have been identified and carried out.

The transition to capability procedures will have occurred if, following review of progress during the appraisal period, no or insufficient improvement has been made in a teacher's performance. It would be both impossible and inappropriate to list the areas of concern about a teacher's performance, but they could include one or any of the following:

- Pupil safety
- Pupil / class behaviour
- Class management
- School and/or departmental management
- Communication with pupils or parents
- Time-table issues, including non-contact time
- Lesson planning
- Preparation
- Assessment
- Marking
- Pupil progress and attainment
- School policies and schemes of work
- Professional relationships
- Teaching practice and quality of teaching
- Personal conduct
- Professional conduct

Whilst not an exhaustive list of activities or sources of support, it might be helpful to consider the following (it is recognised that these may have been considered within the appraisal process):

- Mentoring
- Coaching
- Counselling
- Opportunity to observe good/outstanding practice within the school and/or in other schools
- In-service support and training, including secondment
- Supportive lesson observations
- Temporary or permanent reduction in responsibilities / stepping down to a lower grade
- Increase in non-contact time to allow for issues to be focused on
- Careful planning of review meeting
- Availability of adequate resources
- Health or other personal factors
- Contribution of the management style and structure of the school to the teacher's difficulties
- The Headteacher or another member of teaching staff working alongside the teacher
- Subject co-ordinators advising and assisting in the planning of programmes of work in particular curricular areas and how best it might be presented to the pupils.
- Early retirement

Appendix 2 – Teachers’ Standards

Preamble

Teachers make the education of their pupils their first concern and are accountable for achieving the highest possible standards in work and conduct. Teachers act with honesty and integrity; have strong subject knowledge, keep their knowledge and skills as teachers up-to-date and are self-critical; forge positive professional relationships; and work with parents in the best interests of their pupils.

Part One: Teaching

A teacher must:

1. Set high expectations which inspire, motivate and challenge pupils

- establish a safe and stimulating environment for pupils, rooted in mutual respect
- set goals that stretch and challenge pupils of all backgrounds, abilities and dispositions
- demonstrate consistently the positive attitudes, values and behaviour which are expected of pupils.

2. Promote good progress and outcomes by pupils

- be accountable for pupils’ attainment, progress and outcomes
- be aware of pupils’ capabilities and their prior knowledge, and plan teaching to build on these
- guide pupils to reflect on the progress they have made and their emerging needs
- demonstrate knowledge and understanding of how pupils learn and how this impacts on teaching
- encourage pupils to take a responsible and conscientious attitude to their own work and study.

3. Demonstrate good subject and curriculum knowledge

- have a secure knowledge of the relevant subject(s) and curriculum areas, foster and maintain pupils’ interest in the subject, and address misunderstandings
- demonstrate a critical understanding of developments in the subject and curriculum areas, and promote the value of scholarship
- demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher’s specialist subject
- if teaching early reading, demonstrate a clear understanding of systematic synthetic phonics
- if teaching early mathematics, demonstrate a clear understanding of appropriate teaching strategies.

4. Plan and teach well-structured lessons

- impart knowledge and develop understanding through effective use of lesson time
- promote a love of learning and children’s intellectual curiosity
- set homework and plan other out-of-class activities to consolidate and extend the knowledge and understanding pupils have acquired
- reflect systematically on the effectiveness of lessons and approaches to teaching
- contribute to the design and provision of an engaging curriculum within the relevant subject area(s).

5. Adapt teaching to respond to the strengths and needs of all pupils

- know when and how to differentiate appropriately, using approaches which enable pupils to be taught effectively
- have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these
- demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development
- have a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.

6. Make accurate and productive use of assessment

- know and understand how to assess the relevant subject and curriculum areas, including statutory assessment requirements
- make use of formative and summative assessment to secure pupils' progress
- use relevant data to monitor progress, set targets, and plan subsequent lessons
- give pupils regular feedback, both orally and through accurate marking and encourage pupils to respond to the feedback.

7. Manage behaviour effectively to ensure a good and safe learning environment

- have clear rules and routines for behaviour in classrooms, and take responsibility for promoting good and courteous behaviour both in classrooms and around the school, in accordance with the school's behaviour policy
- have high expectations of behaviour, and establish a framework for discipline with a range of strategies, using praise, sanctions and rewards consistently and fairly
- manage classes effectively, using approaches which are appropriate to pupils' needs in order to involve and motivate them
- maintain good relationships with pupils, exercise appropriate authority, and act decisively when necessary.

8. Fulfil wider professional responsibilities

- make a positive contribution to the wider life and ethos of the school
- develop effective professional relationships with colleagues, knowing how and when to draw on advice and specialist support
- deploy support staff effectively
- take responsibility for improving teaching through appropriate professional development, responding to advice and feedback from colleagues
- communicate effectively with parents with regard to pupils' achievements and well-being.

Part Two: Personal and Professional Conduct

A teacher is expected to demonstrate consistently high standards of personal and professional conduct. The following statements define the behaviour and attitudes which set the required standard for conduct throughout a teacher's career.

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions

- showing tolerance of and respect for the rights of others
 - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs
 - ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.
- Teachers must have proper and professional regard for the ethos, policies, and practices of the school in which they teach and maintain high standards in their own attendance and punctuality.
 - Teachers must understand, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

Appendix 3 – Record of Capability Meeting Template

Objective:			
Teacher Standard:			
Target Date for Achievement:			
Success Criteria: (how achievement towards objectives will be evident)	Resources and actions to be taken to support progress: (who needs to do what and when)	Details of monitoring activities to gather evidence, with dates: (Lesson observations; workbook scrutiny; evaluations of planning; feedback from pupils)	Meetings to formally review progress: (to be completed following monitoring activities and at Review Meetings)
Signature (Manager):		Date:	
Signature (Teacher):		Date:	

Appendix 4 – Example of Record of Capability Meeting

Objective:		Make accurate and productive use of assessment	
Teacher Standard:		Teacher Standard 6	
Target Date for Achievement:		DD / MM / YYYY	
Success Criteria: (how achievement towards objectives will be evident)	Resources and actions to be taken to support progress: (who needs to do what and when)	Details of monitoring activities to gather evidence, with dates: (Lesson observations; workbook scrutiny; evaluations of planning; feedback from pupils)	Meetings to formally review progress: (to be completed following monitoring activities and at Review Meetings)
<p>Devising personalised learning opportunities for all pupils through use of PLCs at KS4</p> <p>Make use of PLCs to set targets for all pupils in (subject) by (date)</p> <p>Give regular, clear and precise feedback to pupils during lessons so that they are clear about their progress against the lesson learning objective.</p> <p>Provide pupils with clear assessment/ success criteria so that they can self- and peer-assess their progress</p> <p>Mark pupils' work at regular intervals following school policy of WWW, EBI and ACT.</p>	<p>Coaching session by (person) to support differentiation in lesson planning based on assessment data on (date)</p> <p>Coaching session by (person) to support pupil target setting in (subject) on (date)</p> <p>Visit (person) lesson to observe good practice in feedback during lessons on (date) at (time).</p> <p>Notes to be taken and ideas for own lesson(s) discussed (time)</p> <p>Department examples developed with HoD at next department meeting (date) using exam mark scheme(s).</p> <p>Coaching session by (person) to review school marking policy and to model best practice in written feedback on (date)</p> <p>Coaching session by (person) to model best practice on (date). Ensure pupils are given sufficient time to respond to written feedback in lessons.</p>	<p>Evaluation of teachers' lesson planning by HOD on (date)</p> <p>Monitoring meeting with Appraiser on (date)</p> <p>Lesson observation by DoL on (date)</p> <p>Lesson observation by HoD on (date)</p> <p>Evaluation of teachers' marking by DoL on (date)</p> <p>Lesson observation by DoL on (date)</p>	<p>Review meeting: (date) at (time)</p> <p>Formal Assessment meeting: (date) at (time)</p>
Signature (Manager):		Date:	
Signature (Teacher):		Date:	