

Capability Policy for Support Staff

A fair, supportive and accessible procedure for sustained under-performance

Longwill school for Deaf Children

Document control	Details
Status	For governing body adoption
Policy owner	Governing Body
Policy lead	Headteacher - Jessica Rosser
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Source procedure	Birmingham City Council Capability Procedure for Support Staff, Version 1.0 (approved 1 July 2025)

Local authority requirement: This school version must be read with Birmingham City Council's current Ongoing Statutory Duties document. Because the policy assumes that Birmingham City Council is the employer of staff at a maintained community special school, the school must obtain current local-authority employee-relations advice before any capability hearing, appeal against a dismissal decision, or determination that an employee should cease to work at the school.

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Using this document: The headings below form the policy's navigation structure in Word. Managers should use the procedure only with current Birmingham City Council employee-relations advice.

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1. Purpose and status

The Governing Body of [School name] adopts this policy to support employees to achieve and maintain the standard required in their role and to provide a fair, consistent procedure where sustained under-performance remains after appropriate support.

The governing body and headteacher are responsible for ensuring that standards are clearly defined and communicated, performance is assessed fairly, appropriate training and support are provided, and concerns are addressed promptly. The primary aim is improvement; continued failure to improve may ultimately result in dismissal on grounds of capability.

Status: This policy is a school adaptation of the Birmingham City Council procedure supplied in October 2025. It has been checked against employment principles and official guidance available on 4 August 2026. The governing body should consult staff and recognised trade unions before adoption or any material amendment.

2. Scope and relationship with other procedures

This policy applies to employees working at the school as support staff after completion of any contractual probationary period, regardless of grade, hours or working pattern.

It does not apply to:

- 20. support staff during a probationary period, who are managed under the school's probation procedure;
- 21. agency workers, contractors, volunteers or self-employed workers, whose arrangements are governed by their contract or the relevant volunteer/agency procedure;
- 22. misconduct, deliberate refusal to follow a reasonable instruction, safeguarding allegations or breaches of conduct, which are normally addressed under disciplinary or safeguarding procedures;
- 23. inability to work because of sickness, injury or disability, which is normally addressed under the attendance or ill-health capability procedure with Occupational Health advice and reasonable adjustments; or
- 24. redundancy, grievance or whistleblowing matters, which have separate procedures, although connected issues may sometimes be managed concurrently after employee-relations advice.

3. Definitions, roles and delegation

- 25. Capability means the ability to perform the duties of the role to the standard reasonably required. Lack of capability is different from misconduct.
- 26. Support staff means any school employee who is not employed as a teacher.
- 27. The Local Authority or Authority means Birmingham City Council acting in its education and employer capacity for a maintained school.
- 28. A companion is a work colleague, a trade union official employed by a union, or a trade union representative certified as competent by their union. A communication professional or disability support worker attending as a reasonable adjustment is additional and does not count as the chosen companion.

29. The headteacher or a suitably delegated manager normally manages informal support and formal capability meetings. A manager must not decide an appeal against their own decision.
30. Any hearing, dismissal determination and appeal will be conducted under the governing body's current Scheme of Delegation and applicable school staffing rules. Where the small size of the school or governing body makes role separation difficult, the Chair of Governors will obtain Birmingham City Council advice and record the agreed approach before proceeding.

4. Core principles

31. No surprises: concerns, evidence, required standards and possible consequences will be explained promptly and clearly.
32. Improvement first: suitable training, coaching, resources, supervision and feedback will be offered and kept under review.
33. Fair evidence: decisions will use relevant evidence from more than one source wherever practicable and the employee will be able to respond and submit evidence.
34. Reasonable and proportionate timescales: the period will reflect the concern, the role, the employee's working pattern and personal circumstances, and the time reasonably needed to demonstrate improvement.
35. Right to representation: the employee may be accompanied at every formal meeting and appeal. If the chosen companion is unavailable, the meeting will be postponed to a reasonable alternative within five working days of the original date where the statutory right applies.
36. Consistency and dignity: the school will act without discrimination, maintain confidentiality, consider wellbeing and workload, and keep accurate records.
37. Current advice: the school will use this policy with the latest BCC Ongoing Statutory Duties document and seek employee-relations advice at the points specified.

5. Equality, accessibility and communication support

The school will comply with the Equality Act 2010 and its duty to make reasonable adjustments. The manager will ask at the start of informal support and before each formal meeting whether the employee requires an adjustment or communication arrangement.

38. Documents will be provided in an accessible form and with sufficient time for preparation. This may include clear written information, larger print, an electronic copy, a BSL translation or another agreed format.
39. Where required, the school will arrange an appropriately qualified and independent BSL/English interpreter, lipspeaker, speech-to-text reporter or other communication professional. A pupil-facing colleague, relative or chosen companion will not normally be used as interpreter.
40. Meetings will allow time for interpretation and processing. The room, seating, lighting and sightlines will support visual communication, and participants will communicate one at a time.

41. The communication professional provides access and is bound by confidentiality. Their presence does not remove the employee's separate right to a companion.
42. Targets, monitoring and timescales will be adjusted where reasonable so that disability, health, part-time work, leave or an agreed communication arrangement does not create an unfair disadvantage.

Adjustment record: The manager will record the adjustments considered, those agreed, who will arrange them and any review date. Refusal of a requested adjustment will be explained in writing after employee-relations advice.

6. Evidence and the school's deaf-education context

Performance will be assessed against the employee's current job description, contract, agreed objectives, required competencies and relevant school policies. Expectations must be clear, reasonable and within the employee's control.

43. Evidence may include work outputs and records, observation of relevant duties, accuracy and timeliness, service standards, agreed data, supervision records, feedback linked to the role and the impact on pupils, colleagues or school operations.
44. The diverse nature of support roles will be respected. Evidence must relate to the actual duties, training and grade of the employee and must not import teaching standards into a support role.
45. Where duties involve pupils, expectations will reflect the school's communication approach and the support specified in pupils' Education, Health and Care Plans. The employee must have received appropriate induction, training, resources and access to communication support before a shortfall is attributed to capability.
46. Judgements will distinguish between the employee's performance and barriers caused by unavailable equipment, unclear systems, inadequate staffing, inconsistent communication access or matters outside the employee's reasonable control.
47. Complaints or feedback will be checked and treated cautiously. An employee must be given sufficient detail to understand and respond; a decision will not be based solely on an untested anonymous assertion.

7. Informal support through appraisal

Except in the most serious cases, formal capability will begin only after concerns have been discussed and an appropriate period of informal support under supervision or appraisal has not secured sufficient improvement. Informal support is not a formal warning.

48. The manager will meet the employee, explain the concerns and evidence, listen to the employee's response and consider personal, health, disability, workload, resource, training and communication factors.
49. If concerns remain, the manager will agree a written employee support plan stating the standard required, specific objectives and success criteria, support and training, monitoring and evidence, adjustments, responsibilities and review dates.
50. The informal support period will normally be at least six working weeks, adjusted for the employee's hours and the opportunity to demonstrate the required tasks. A shorter

period will be used only where the seriousness and circumstances make it reasonable, after employee-relations advice.

51. Progress will be reviewed regularly. If sufficient improvement is sustained, the employee will be told in writing and normal supervision/appraisal will continue. If concerns remain, the employee will receive a written explanation and may be invited to a formal capability meeting.

8. Starting the formal capability procedure

The headteacher or designated manager will review the evidence and support, confirm that the concern is capability rather than conduct or ill health, consider reasonable adjustments, and seek employee-relations advice where appropriate.

The employee will receive at least five working days' written notice of the first formal capability meeting. The notice will:

52. state the concerns, the role requirements alleged not to have been met and the possible consequences, including that continued under-performance may ultimately lead to dismissal;
53. give the date, time, place, meeting manager and any adviser attending;
54. include the evidence to be considered, the informal support record and this policy;
55. confirm the right to be accompanied and invite the employee to state accessibility or reasonable-adjustment requirements; and
56. invite the employee to provide relevant documents and identify witnesses in reasonable time before the meeting.

9. First formal capability meeting

The meeting establishes the facts and gives the employee a full opportunity to respond. The manager will explain the concern and evidence; the employee and companion may make representations, ask questions, provide evidence and identify relevant witnesses.

After considering the information, the manager may adjourn and will choose one of the following outcomes:

57. no further action under this policy;
58. return the remaining concern to normal supervision, appraisal or informal support; or
59. issue a first written capability warning and formal employee support plan where the concerns are substantiated.

A first written warning will identify the unmet role requirements, required improvement and success criteria; support, monitoring and adjustments; evidence; review period; and consequences of insufficient improvement. The first formal monitoring period will normally be seven to eight working weeks.

The written outcome, notes, warning (if any), support plan, review date and right of appeal will normally be sent within two working days. The employee may comment on the accuracy of the notes; unresolved comments will be kept with them.

10. Monitoring and second capability meeting

Formal monitoring, feedback, guidance and support will continue throughout the review period. The employee must engage with reasonable support and may raise concerns about the plan or evidence promptly.

The employee will receive at least five working days' notice of the second meeting and the evidence to be considered. Progress will be reviewed against the warning and support plan, and the employee may respond and present evidence.

The manager may:

60. end formal capability because the role requirements have been met and confirm return to normal supervision/appraisal;
61. extend or revise the current plan for a reasonable period where progress is substantial and further improvement is likely; or
62. issue a final written capability warning where improvement is insufficient, setting a further monitoring period normally of six to seven working weeks and warning that failure to improve may lead to a decision meeting and referral to a capability hearing.

The written outcome, notes, revised plan, final warning (if any), decision-meeting date and right of appeal will normally be sent within two working days.

11. Third capability / decision meeting

The employee will normally receive at least five working days' notice. The school will provide the evidence in reasonable time, and the employee and companion may respond, ask questions and present evidence.

After reviewing performance against the final warning and support plan, the manager may:

63. end formal capability because the required standard has been achieved;
64. extend the monitoring period for a defined and reasonable period where there is a credible prospect of achieving the role requirements; or
65. refer the matter to a capability hearing with a recommendation that the employee should cease to work at the school on grounds of capability.

The decision and reasons, with the meeting notes and supporting evidence, will normally be sent within two working days. A referral is not itself a dismissal decision.

12. Capability hearing and dismissal decision

Mandatory local-authority contact: Before arranging a hearing that could result in a determination that an employee should cease to work at the school, the headteacher and Governing Body must follow the current BCC Ongoing Statutory Duties document and notify/consult Birmingham City Council as required.

The hearing will be conducted by the person or governor panel authorised under the governing body's Scheme of Delegation, provided they have not previously managed the case. An employee-relations adviser may attend to advise the decision-maker.

66. At least ten working days' written notice will be given, explaining the purpose, possible outcomes, right to be accompanied, accessibility arrangements and document/witness exchange.
67. The school will provide its management statement and evidence in sufficient time. Each side should provide documents and witness statements at least five working days before the hearing. Late evidence will be considered only if the chair decides this is fair, with an adjournment where necessary.
68. The management case will normally be presented by the headteacher or designated manager. The employee may respond, be represented, question evidence, call relevant witnesses and make a final statement.
69. The decision-maker may take no action, allow a further defined improvement period, or determine that the employee should cease to work at the school. Redeployment may be considered where appropriate and genuinely available, but there is no obligation to create a role.
70. The decision and reasons will be announced or sent in writing. Any oral decision will be confirmed in writing normally within two working days, stating any notice arrangements and the right of appeal.

For a community, community special, voluntary controlled or maintained nursery school, a cease-work determination will be notified to Birmingham City Council with reasons so that the Authority, as employer, can take the action required by law and contract.

13. Appeals

An employee may appeal against a first written capability warning, final written capability warning, extension or variation that constitutes formal action, or a decision that they should cease to work at the school.

71. The appeal must be sent in writing to the Clerk to the Governing Body within five working days of receiving the written decision. It must state the grounds and include any additional evidence then available.
72. An appeal against a warning will not normally pause support or monitoring unless the appeal chair decides otherwise. An appeal against a cease-work or dismissal decision does not automatically suspend the decision or any statutory/contractual notice; the school and Local Authority will follow current BCC advice pending the appeal.
73. The appeal will be heard without unreasonable delay by an impartial person or panel not previously involved. At least five working days' notice will normally be given, with the same right to be accompanied and accessible-communication arrangements as the original meeting.
74. The appeal may uphold, revoke or vary the decision; direct a further or revised improvement period; or require a rehearing by a different decision-maker where appropriate.
75. The appeal outcome is final under this procedure and will be confirmed in writing as soon as possible, normally within five working days. Birmingham City Council will be informed immediately where its employer action is affected.

14. Special and exceptional circumstances

Serious cases

In an extreme case where persistent failure is seriously jeopardising pupils' education, safety or an essential school service, the headteacher may propose starting at the second formal stage. After employee-relations advice, the employee will receive at least five working days' notice, the evidence and reasons, the right to be accompanied and full opportunity to respond. If fast-tracking is confirmed, the reasons and final warning will be recorded and progress will normally be reviewed weekly during the shortened period.

Sickness, disability and Occupational Health

If sickness absence begins during monitoring, the school will use its attendance policy, consider Occupational Health advice and reasonable adjustments, and decide fairly whether to pause, adapt or continue. Absence will not automatically end the process, and no adverse inference will be drawn merely from disability or lawful absence.

Grievance or complaint

A grievance raised during capability will be considered promptly. The procedure may be paused where necessary for fairness; related matters may be addressed concurrently where this can be done impartially. Employee-relations advice will be sought.

Trade union representatives

The same standards apply to an employee who is a trade union representative. With the employee's agreement, the school will discuss the matter at an early stage with an employed local or regional union official before formal action.

Non-attendance

Every reasonable effort will be made to enable attendance, including adjustments and one reasonable postponement for a companion. If the employee persistently cannot or will not attend without good reason, the meeting may proceed on the evidence after employee-relations advice, and the employee may make written representations.

Suspension

Suspension is not a normal capability measure and is not a disciplinary sanction. If exclusion from school is considered necessary for another reason, the school will use the appropriate separate procedure, keep the decision under review and notify Birmingham City Council as required.

15. Confidentiality and records

76. Capability information will be shared only with those who need it for the process, advice, governance oversight or legal duties. Governors will receive anonymised monitoring information unless case information is necessary for an authorised function.
77. Records will be accurate, relevant, secure and retained in accordance with the school's Records Retention and Disposal Policy, employee privacy notice, UK GDPR and Data Protection Act 2018. Health information and adjustment records require particular care.

78. The employee will receive meeting notes and formal decisions and may request correction of factual inaccuracies. Their comments will be stored where disagreement remains.

79. Any employment reference or disclosure will be accurate, fair, lawful and limited to information the school is entitled or required to provide.

16. Monitoring and review

The Governing Body and headteacher will monitor the operation and effectiveness of this policy, including consistency, equality, reasonable adjustments, staff workload, timescales, outcomes and lessons for training or organisational support. Case reporting will be anonymised.

The policy will be reviewed by 31 August 2027, or earlier if legislation, national guidance, the BCC procedure or Ongoing Statutory Duties document changes. The governing body will consult staff and recognised trade unions on material revisions.

Appendix A - Minimum content of an employee support plan

Field	Minimum information
Concern and evidence	The role requirement; evidence of the shortfall; impact on pupils, colleagues, service or school; employee's response and context.
Improvement required	Specific, realistic objectives and success criteria linked to the job description and required competencies.
Support	Training, coaching, examples, resources, protected time, supervision, equipment and wellbeing support.
Accessibility	Communication arrangements, reasonable adjustments, Occupational Health advice and review of effectiveness.
Monitoring and evidence	Who will monitor; methods and frequency; how evidence will be shared; how the employee may provide evidence or challenge accuracy.
Timescale and reviews	Start/end dates; feedback dates; formal review date; allowance for working pattern, leave and opportunity to perform relevant tasks.
Responsibilities	Actions for employee, manager, trainer/support provider and school, with named owners and deadlines.
Possible outcome	What happens if the standard is met, partly met or not met; warning status and appeal route.

Appendix B - Procedure and timescales at a glance

Stage	Normal minimum / period	Key outcome
Informal support	Normally at least 6 working weeks	Return to appraisal/supervision or formal invitation
First formal meeting notice	At least 5 working days	No action, informal support or first written warning
First formal monitoring	Normally 7-8 working weeks	Support and evidence against agreed criteria

Stage	Normal minimum / period	Key outcome
Second meeting notice	At least 5 working days	End, extend or final written warning
Further monitoring	Normally 6-7 working weeks	Support and evidence against final warning
Decision meeting notice	At least 5 working days	End, extend or refer to hearing
Capability hearing notice	At least 10 working days	No action, further period or cease-work determination
Hearing documents	Normally at least 5 working days before	Fair exchange of documents and witnesses
Appeal submission	Within 5 working days of written decision	Written grounds and additional evidence
Appeal notice	Normally at least 5 working days	Impartial final decision
Meeting outcomes	Normally within 2 working days; appeal within 5	Written reasons, notes and next steps

Timescale flexibility: These periods are the school's normal framework, not a licence to rush or delay. Any variation must be reasonable, proportionate, explained in writing and checked with employee-relations advice where it could affect fairness.

Legal and guidance references

The policy should be reviewed if any of the following sources changes, or if Birmingham City Council issues a replacement procedure or revised statutory-duties instruction.

- **Birmingham City Council Capability Procedure for Support Staff, Version 1.0** - approved 1 July 2025; supplied by the user
- **BCC Ongoing Statutory Duties document** - use the current version held by the school/BCC employee-relations service
- [DfE: Staffing and employment guidance for schools](#) - updated September 2025
- [School Staffing \(England\) Regulations 2009](#) - including regulation 8 and provisions applicable to the school's category
- [Acas Code of Practice on disciplinary and grievance procedures](#) - current statutory Code at the preparation date; fairness principles apply to poor performance
- [Equality Act 2010](#) - including reasonable-adjustment duties
- [Employment Relations Act 1999](#) - including the right to be accompanied
- [Employment Rights Act 1996](#) - including fair dismissal and notice principles
- [UK GDPR and Data Protection Act 2018](#) - employment-record principles and security