

Capability Policy for Teachers

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

[School name]

Document control	Details
Status	For governing body adoption
Policy owner	Governing Body
Policy lead	Headteacher - Jessica Rosser
Prepared	4 August 2026
Proposed effective date	1 September 2026 (subject to governing body approval)
Review date	31 August 2027
Version	1.0 - school edition 2026
Source procedure	Birmingham City Council Capability Procedure for Teachers, 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 under regulation 8 of the School Staffing (England) Regulations 2009. It provides a clear framework for cases in which a teacher or school leader persistently fails to meet required standards and the appraisal process, including an appropriate period of informal support, has not secured sufficient improvement.

The purpose of capability management is improvement. The school will define the standards required, assess performance fairly, provide appropriate support and reasonable time to improve, and act promptly where pupils' education or the school's work is being adversely affected.

Status: This policy is a school adaptation of the Birmingham City Council procedure supplied in October 2025. It has been checked against national 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 teachers, members of the leadership group and the headteacher who are employed to work at the school. Unless stated otherwise, references to a teacher include a headteacher.

22. It is for lack of capability: an employee's inability to perform duties to the standard required despite appropriate support. It is not a substitute for day-to-day supervision or constructive professional feedback.
23. Misconduct, deliberate refusal to follow a reasonable instruction, safeguarding allegations and breaches of professional conduct are normally managed under the disciplinary or safeguarding procedures.
24. Ill health, disability-related absence or inability to work because of a health condition is normally managed under the attendance or ill-health capability procedure, with Occupational Health advice and reasonable adjustments.
25. Redundancy, grievance and whistleblowing matters are handled under their separate procedures, although connected issues may sometimes be managed concurrently after employee-relations advice.
26. Teachers undergoing statutory induction are not covered by the appraisal regulations. Section 15 explains the limited circumstances in which this capability procedure may run alongside induction.

3. Definitions, roles and delegation

27. Capability means the ability to perform the duties of the role to the required standard. A lack of capability is different from misconduct.
28. The Local Authority or Authority means Birmingham City Council acting in its education and employer capacity for a maintained school.
29. 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 does not replace, or count as, the chosen companion.

30. For teachers other than the headteacher, the headteacher or a suitably delegated senior leader normally manages the informal and formal review stages. Headteacher cases are managed under section 14.
31. Any hearing, dismissal determination and appeal will be conducted under the governing body's current Scheme of Delegation and applicable school staffing rules. No person will determine an appeal if they were involved in the decision being appealed.
32. Because this is a small school, perfect separation of every administrative task may not be possible. Where impartiality or panel membership is difficult, the Chair of Governors will seek Birmingham City Council advice before the stage is arranged and record the agreed approach.

4. Core principles

33. No surprises: concerns, evidence, expected standards and possible consequences will be explained promptly and clearly.
34. Improvement first: appropriate training, coaching, resources, supervision and feedback will be offered and kept under review.
35. Fair evidence: decisions will be based on relevant evidence from more than one source wherever practicable, with the employee able to respond and submit evidence.
36. Reasonable and proportionate timescales: the period will reflect the seriousness and complexity of the concerns, the employee's working pattern and personal circumstances, and the time reasonably needed to demonstrate sustained improvement.
37. 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.
38. Consistency and dignity: the school will act without discrimination, maintain confidentiality, consider wellbeing and workload, and keep accurate records.
39. Current advice: managers 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. At the start of informal support and again before each formal meeting, the manager will ask whether any adjustment or communication arrangement is required.

40. Information will be provided in an accessible form and with sufficient time for the employee to understand it and prepare. This may include a clear written summary, larger print, an electronic copy, a BSL translation or another agreed format.
41. Where required, the school will arrange an appropriately qualified and independent BSL/English interpreter, lipspeaker, speech-to-text reporter or other communication professional. The employee will not normally be expected to use a pupil-facing colleague, family member or their chosen companion as interpreter.

42. Meetings will allow time for interpretation and processing. Rooms, seating, lighting and sightlines will support visual communication; speakers will identify themselves and communicate one at a time.
43. A communication professional is bound by confidentiality and attends to provide access, not to advise either party. Their presence does not remove the employee's separate right to a companion.
44. Targets, evidence-gathering 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

Teachers will be assessed against the Teachers' Standards that apply to them, their job description and responsibilities, agreed objectives, and relevant school policies. Evidence must be proportionate to the concern and gathered in a way that respects professional dignity.

45. Possible evidence includes focused observation, planning and work scrutiny, assessment information, professional records, agreed management information, feedback linked to the role, and the impact of leadership responsibilities.
46. Pupil progress information will be interpreted using appropriate starting points and the context of pupils' special educational needs, Education, Health and Care Plans, language and communication access, attendance and other relevant barriers. No decision will rest solely on a single data measure.
47. Observation and feedback will recognise the school's communication approach, including BSL and/or other communication methods specified for pupils. Judgements must distinguish between an employee's performance and barriers caused by unavailable resources, inconsistent communication support or matters outside the employee's reasonable control.
48. Evidence will identify the expected standard, the shortfall, its impact and how the evidence was obtained. The employee may challenge accuracy, provide context and submit relevant evidence.
49. Pupil, parent or colleague feedback will be treated cautiously, verified where possible and not used as an anonymous assertion without sufficient particulars for a fair response.

7. Informal support through appraisal

Except in the most serious cases, a teacher will not enter formal capability without a period of informal support under the appraisal process. Informal support is not a formal warning and notification of formal capability should never come as a surprise.

50. The appraiser or manager will meet the teacher, explain the concerns and evidence, listen to the teacher's response, and consider personal, health, disability, workload, resource and communication factors.

51. If concerns remain, the manager will agree a written support plan stating the standards to be met, specific objectives and success criteria, support and professional development, evidence and monitoring, adjustments, responsibilities, and review dates.
52. The informal support period will normally be at least six working weeks. It may be longer where the evidence can only be demonstrated over a longer teaching cycle. A shorter period will be used only where the seriousness and circumstances make it reasonable, after employee-relations advice.
53. Progress will be reviewed regularly. If sufficient improvement is sustained, the teacher will be told in writing and normal appraisal will continue. If concerns remain, the teacher 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 provided, check that the concern is capability rather than conduct or ill health, consider adjustments, and obtain employee-relations advice where appropriate.

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

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

9. First formal capability meeting

The meeting establishes the facts and gives the teacher a full opportunity to respond. The manager will explain the concern and evidence; the teacher 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:

59. no further action under this policy;
60. return the remaining concerns to appraisal or informal support; or
61. issue a first written capability warning and formal support plan where the concerns are substantiated.

A first written capability warning will identify the unmet standards, required improvement and success criteria; the support, monitoring and adjustments to be provided; the evidence to be

used; the review period; and the possible consequences of insufficient improvement. The first formal monitoring period will normally be seven to eight working weeks.

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

10. Monitoring and second capability meeting

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

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

The manager may:

62. end formal capability because the required standard has been achieved and confirm a return to appraisal;
63. extend or revise the current plan for a reasonable period where progress is substantial and further improvement is likely; or
64. 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 teacher will normally receive at least five working days' notice. The school will provide the evidence in reasonable time, and the teacher and companion may respond, ask questions and present evidence.

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

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

The decision and reasons, together 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 a teacher 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 current Scheme of Delegation, provided they have not previously managed the case. An employee-relations adviser may attend to advise the decision-maker.

68. At least ten working days' written notice will be given, explaining the purpose, possible outcomes, right to be accompanied, accessibility arrangements and required exchange of documents and witness information.
69. The school will send its management statement and evidence with the notice or in sufficient time for preparation. 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.
70. The management case will normally be presented by the headteacher or designated manager. The teacher may respond, be represented, question evidence, call relevant witnesses and make a final statement.
71. The decision-maker may take no action, allow a further defined improvement period, or determine that the teacher 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.
72. 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 determination that the teacher should cease to work at the school will be notified to the Local Authority with reasons. The Local Authority, as employer, will act in accordance with the School Staffing (England) Regulations 2009, including the applicable notice requirements.

13. Appeals

A teacher 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.

73. 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.
74. 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.
75. 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 the same accessible-communication arrangements as at the original meeting.
76. The appeal may uphold, revoke or vary the decision; direct a further or revised improvement period; or require the matter to be reheard by a different decision-maker where appropriate.

77. 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. Headteacher cases

Where capability concerns relate to the headteacher, the Chair of Governors will contact Birmingham City Council for advice and inform the headteacher in writing. The Chair will ensure that the governing body's delegation, adviser and panel arrangements are lawful, impartial and workable before any formal stage.

78. Day-to-day functions assigned in this policy to the headteacher will be carried out by the Chair of Governors, an appropriately authorised governor or an external person agreed with the Local Authority.
79. Where the Local Authority makes a written report of serious concerns under the School Staffing Regulations, the governing body will notify the Authority in writing of the action it proposes to take.
80. Any governors who manage or investigate the case will not sit on the appeal. The governing body will seek external support if the small size of the governing body creates an impartiality problem.
81. Reports to the wider governing body will protect confidentiality and will not disclose case detail to governors who may later be required to hear or appeal the matter.

15. Early career teachers

The statutory induction process is the normal route for monitoring and supporting an early career teacher (ECT). The appraisal regulations do not apply during induction.

In a few particularly serious cases, capability may begin before the end of induction. If this happens, the statutory induction process must continue in parallel for as long as the ECT remains employed, and the appropriate body must be informed. Capability decisions remain the employer's responsibility; the appropriate body's role concerns induction. Current DfE statutory guidance must be followed.

16. Special and exceptional circumstances

Serious cases

In an extreme case where persistent failure is seriously jeopardising pupils' education or safety, the headteacher may propose starting at the second formal stage. This is not automatic. After employee-relations advice, the teacher 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 in writing 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 the procedure. 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 teacher persistently cannot or will not attend without good reason, the meeting may proceed on the available evidence after employee-relations advice, and the teacher 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.

17. Confidentiality, records and references

82. 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 individual case information is necessary for an authorised function.
83. 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.
84. The employee will receive meeting notes and formal decisions and may request correction of factual inaccuracies. Their comments will be stored where disagreement remains.
85. When a member of teaching staff applies for a teaching post at another maintained school or academy, the governing body will comply with regulation 8A of the School Staffing (England) Regulations 2009. On a valid request it will state whether the teacher was subject to formal capability in the preceding two years and, if so, provide the required details.

18. 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 any 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 a support plan

Field	Minimum information
Concern and evidence	The required standard; evidence of the shortfall; impact on pupils, colleagues or the school; employee's response and context.
Improvement required	Specific, realistic objectives and success criteria linked to Teachers' Standards, the role and relevant school expectations.
Support	Coaching, mentoring, training, observation, resources, protected time, supervision, examples of expected practice and wellbeing support.
Accessibility	Communication arrangements, reasonable adjustments, Occupational Health advice and how their effectiveness will be reviewed.
Monitoring and evidence	Who will monitor; methods and frequency; how evidence will be shared; how the teacher may provide evidence or challenge accuracy.
Timescale and reviews	Start and end dates; interim feedback dates; formal review date; allowance for working pattern, leave and the teaching cycle.
Responsibilities	Actions for the teacher, manager, mentor/support provider and school, with named owners and deadlines.
Possible outcome	What happens if the standard is met, partly met or not met; current warning status; 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 or formal invitation
First formal meeting notice	At least 5 working days	No action, appraisal support or first written warning
First formal monitoring	Normally 7-8 working weeks	Support and evidence against agreed criteria
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

Stage	Normal minimum / period	Key outcome
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 Teachers, 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: Teacher capability - guidance for schools when dealing with serious under-performance](#) - July 2024; valid from September 2024
- [DfE: Induction for early career teachers \(England\)](#) - statutory guidance updated June 2026
- [DfE: Staffing and employment guidance for schools](#) - updated September 2025
- [School Staffing \(England\) Regulations 2009](#) - including regulations 4, 6, 8 and 8A and the provisions applicable to the school's category
- [Education \(School Teachers' Appraisal\) \(England\) Regulations 2012](#) - as amended
- [Acas Code of Practice on disciplinary and grievance procedures](#) - current statutory Code at the preparation date
- [Equality Act 2010](#) - including reasonable-adjustment duties
- [Employment Relations Act 1999](#) - including the right to be accompanied
- [UK GDPR and Data Protection Act 2018](#) - employment-record principles and security