

**Capability Policy Review 2019/2020 – Outline of Changes**

Revised capability policies for school and academy staff have now been published on the CES website. The policies underwent a thorough review process including updating for changes in the law and practice, consultation with National Trade Union Representatives, and then subsequent amendment before final publication.

The table below provides an outline of the key changes that have been made to the policies. It does not list every change that has been made and it is not a substitute for reading the new policies carefully. The first part of the table covers changes that apply to the policies generally and includes changes to the policy for school staff. All paragraph numbers listed are the paragraph numbers in the Schools – England – model policy. The second section covers changes that apply only to specific versions of the policies these changes have generally been made alongside the changes listed in the first part of the table.

It should be noted that the policies are models. In response to feedback, they are available in fully amendable word format and schools should take appropriate legal and/or HR advice where substantive changes to the models are made. Schools should also engage in local consultation before any revised policy is adopted and issued to staff. The capability policy has been provided now so that it can be consulted on ready for use in the 2020/21 academic year.

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| **Change** | **Comment** |
| New notes to users have been inserted to explain the requirements for consultation and to make it clear that the policy must be operated fairly. A commitment to equality has also been included. | The purpose of the notes is to explain how the document should be used and to make the local consultation requirements clear. The commitment to equality statement enshrines in the policies the principles which should underpin capability in a Catholic context.  |
| The definition of Companion has changed. | This definition now includes explicit reference to a trade union official in order to follow the appropriate legislation. |
| The definition of Headteacher has changed.  | The previous definition was somewhat unclear, and the definition has been amended to rectify that. |
| All references to School Days/School Week have been replaced by Working Day and Working Week and where there was no definition of School Days and School Week, Working Day and Working Week has been inserted. | This change has been made to provide consistency across the model policies. It will also make it easier for the employee and employer to establish what the appropriate timescales are for the various stages of the capability process.  |
| Where appropriate references to ‘teacher’ have been replaced with ‘employee’.  | The capability policy applies to all school staff and this change makes that clear. |
| In paragraph 1.2 we have added: “following support being provided pursuant to the Appraisal Policy and Procedure”.  | This change has been made following consultation with National Trade Union Representatives. The change aims to provide clarity about the relationship between appraisal and capability. As you will see from later in this table, it is now made clear that capability should only be invoked if the support available pursuant to the appraisal policy has been fully exhausted. |
| In paragraph 1.5 reference to the Data Protection Act 2018 has been included. | This now makes it clear that it is not just GDPR that applies but also the Data Protection Act 2018. |
| In paragraph 1.11 we have inserted the following: “The expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been exhausted”.  | This change has been made following consultation with National Trade Union Representatives. The aim is to make the relationship between appraisal and capability clearer.  |
| In paragraph 2.2 in relation to a Headteacher, subject to capability, continuing to be responsible for staff appraisal we have added the following: “unless the Board/Governing Body determines that this is inappropriate” | This change was made following feedback from National Trade Union Representatives that it may not always be appropriate for a Headteacher who is subject to capability to continue to conduct appraisal proceedings for staff.  |
| In paragraph 3 we have made various changes to the table.  | The table should be reviewed carefully by schools and academies. The changes made make it clear who should be appointed and provide that a panel is necessary where dismissal is one of the possible outcomes of the meeting. |
| In paragraph 5.2 and 6.2 various changes have been made to the process for arranging capability meetings.  | These provisions should be reviewed carefully in order to ensure that schools and academies are following an appropriate procedure. All employees should be able to follow the process and know what is likely to happen as a next step. The changes made provide greater clarity.  |
| In paragraph 6.6 we have made it clear that alternative sanctions to dismissal may be considered. This paragraph also makes it clear that dismissal will always be the last resort. | The list of alternative sanctions is illustrative and non-exhaustive and was included following consultation with National Trade Union Representatives. |
| In paragraph 7. 2 we have inserted a number of suggested grounds for appeal.  | This is to provide all parties with guidance as to what may constitute a relevant ground of appeal for the purposes of an appeal hearing but is in no way intended to be an exhaustive list. This list was inserted following consultation with National Trade Union Representatives. |
| In paragraph 7.7 we have inserted the following: “Should an appeal against dismissal be successful, you will be reinstated with no break in your continuous service”.  | This amendment provides clarity about the impact of reinstatement on an employee’s continuous service (and the rights that flow from that service). This change was made following consultation with National Trade Union Representatives. |
| **Welsh Schools** |
| In paragraphs 1.3 and 1.4 we have inserted an explanation as to when the policy should be invoked and by whom it can be invoked.  | This change has been made in order to make the Welsh version consistent with the English version. |
| In paragraph 2.2 we have inserted a new paragraph which provides for informal support prior to the formal capability process being invoked.  | This paragraph was inserted in order to follow the Welsh Government guidance and in consultation with National Trade Union Representatives. |
| In paragraph 6.10 we have inserted the following: “The Final Capability Manager, in progressing a Final Capability Meeting, must act in accordance with the current version of the Welsh Government Guidance on Disciplinary and Dismissal Procedures for School Staff in so far as it is applicable to a dismissal on the grounds of capability.” | This change has been made in consultation with National Trade Union Representatives and in order to be compliant with Welsh Government guidance. This addition makes it clear that that the Welsh Government Guidance on Disciplinary and Dismissal Procedures for School Staff should be consulted to ensure that the Final Capability Meeting is compliant. This guidance is particularly important in relation to the formation of the Governors’ Staff Disciplinary and Dismissal Committee. |
| In paragraph 8.1 we have inserted the following: “Governors shall be appointed to Staff Disciplinary and Dismissal Committees and Appeal Committees in accordance with the relevant guidance on disciplinary and dismissal procedures issued by the Welsh Government.”  | This addition makes it clear that the Welsh Government Guidance should be consulted to ensure that the appointment process is compliant.  |
| **Academies** |
| A note has been included on the front page of the academy policy to make it clear that academies must review the contents of the model in light of their own governance structures. This important review must be carried out for all academies as not all structures are the same. Further, a new user note in the definitions section highlights that it is should be clear to the employee which body is carrying out the employment functions of the Academy Trust Company. | These notes have been included because the structure of academies and MATs is not always the same and different entities will have different decision-making powers. |

**Catholic Education Service**

**18 June 2020**