



## CAPABILITY POLICY

**This is a whole-school policy, within the framework of which the Primary School and the Nursery policies operate as appropriate.**

The School processes will ensure that an informal process of support, if appropriate, will have been in place before this policy applies. Documentary evidence of such support will be available before the capability process can begin.

This procedure applies to members of staff about whose performance there are serious concerns that the performance management process has been unable to address.

This policy sets out the framework for a clear and consistent process for those members of staff whose performance is deemed to fall short of the National Teachers' Standards, Teachers' Career Expectations, Professional Conduct and/or their job description.

The School is committed to ensuring consistency of treatment and fairness in the operation of these Capability Procedures.

### **Capability and Qualifications**

1. The School recognises the difference between:-
  - a deliberate failure on the part of the employee to perform to the standards of which he or she is capable, in which case the School may take action under the Disciplinary Policy; and
  - a case of incapability, where an employee is lacking in knowledge, skill or ability and so cannot carry out his or her duties to the standard required, in which case the School will operate this policy in an attempt to improve performance.
2. The School sees successful performance management as fundamental to its effectiveness as a whole and if it becomes clear that an employee is not performing his or duties to the required standard due to a lack of knowledge, skill or ability, the School will arrange a meeting with the employee to discuss the matter. The School will:-
  - make the employee aware that he or she is not performing to the required standard;
  - give the employee a reasonable period to improve and undertake any training which is deemed necessary; and
  - offer the employee close supervision by his or her Manager or Supervisor.

3. At the end of this period, another meeting will be arranged to review the employee's progress and decide whether or not any further action is required.
4. If the employee's performance has still not improved to an acceptable standard, a more formal meeting may be held. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the staff member to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
5. This meeting is intended to confirm and establish a way forward. It will be conducted by a member of the governing body, Head, Director of Business and Finance or other suitably qualified person that has delegated responsibility from the Head or Director of Business and Finance. The meeting allows the staff member, 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.
6. The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the performance management process. 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).
7. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
  - identify the professional shortcomings (for example elements of the documents listed below)
    - a) teacher's standards, including professional conduct
    - b) teachers career expectations document
    - c) person specification and/or job description
  - Give clear guidance on the improved standard of performance needed to ensure that the staff member can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
  - Explain any further support that will be available to help the staff member improve their performance;
  - Set out 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 in straightforward cases could be 4 to a maximum of 8 weeks;

- Warn the staff member formally that failure to improve within the set period could lead to dismissal. In very serious cases, e.g. health and safety concerns, this warning could be a final written warning;
  - Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the staff member will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.
8. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning.
  9. As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
  10. If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the performance management process will re-start. In other cases:
    - If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period, in which case another meeting is arranged.
    - If no, or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final written warning.
  11. As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. They will also be given information regarding the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.
  12. If the employee is unable to improve to the required standard, the School will consider whether or not he or she can be moved to alternative work more suited to his or her abilities.
  13. Once the School has exhausted all attempts to improve the employee's performance and find him or her alternative duties within the School, as a last resort it may become necessary to consider dismissal. The staff member will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.
  14. If a staff member feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days, 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 companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the staff member. The staff member will be informed in writing. The appeal will be dealt with impartially, and wherever possible, by managers or governors who have not previously been involved in the case. The staff member will be informed in writing of the results of the appeal hearing as soon as possible.

15. Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.
16. Where an employee no longer has the correct qualifications to continue to perform his or her duties, the School will consider whether or not adjustments can be made to existing duties so that employment can continue. Where the qualification in question is fundamental to the employee's duties and he or she cannot continue without them, the School will consider whether or not the employee can be moved to another position. The School will also give consideration to whether the employee can be returned to his or her original duties, once the qualifications have been re-gained.
17. If the employee is offered alternative work, this may be on a reduced rate taking into account the alternative work. The School will however pay the employee's previous remuneration for a period of 6 months.
18. Once the School has exhausted all attempts to amend the employee's existing duties or to alternative duties within the School, or if no such amendments can be made or alternative duties found, it may, as a last resort, become necessary to consider dismissal. The employee does have the right to appeal as stated in point 21.
19. The Governing Body, Head and Deputy Head (Academic) will ensure that all written performance management records are retained in a secure place for six years and then destroyed.

### **Illness**

20. It is the School's policy to support employees who are genuinely sick and unable to come to work and, where an employee's absence lasts for two weeks or more, to actively to manage his or her absence and subsequent return to work.
21. The School will adopt a 'case management' approach when dealing with employees who are incapable of working due to ill health. This means regularly reviewing an employee's absence and state of health or fitness to see whether or not there is any improvement and if the School can do anything to facilitate the employee's recovery and return to work. Case reviews will normally be held fortnightly, and these will involve the employee's Line Manager, the Head/Director of Business and Finance and occupational health, where appropriate.
22. Part of the case management will be for the School to keep in touch with the employee. The employee will be consulted about how contact will be maintained, for example by telephone, email and/or visits to the employee's home at agreed times. The employee's views on how contact should be made will be sought and respected.

23. When an absent employee is well enough to return to work, the School will meet with the employee to discuss the terms of his/her return. The discussions will include:-

- the employee's opinion about his/her capabilities, for example whether the employee is confident that he/she is capable of full job performance or only partial performance;
- whether the employee should return full time or have a phased return;
- whether or not the employee will be taking any medication after his/her return to work that might have side effects, for example tiredness;
- any special arrangements, additional support or adjustments to the employee's duties, working conditions or environment that would help the employee to reintegrate into the workplace; and
- whether an induction programme is desirable or necessary, for example if the employee's absence is lengthy and if a number of School or procedural changes have taken place during this time.

24. After the employee's return, the School will:-

- monitor the employee's progress over the first six weeks to ensure that he/she is coping with the work and the day to day pressures of working life; and
- take all reasonable steps to facilitate the employee's reintegration into the workplace.

25. If the School uses the services of an occupational health specialist, the School may request that an employee provides access to their medical records and consents to an occupational health assessment (at the School's expense), to allow the occupational health specialist to provide a report to the School. The terms of all employees' contracts provide that they must give such consent to the School. Refusal to submit to such examination may be treated as misconduct. The School will routinely ask an employee who has been absent from work for a month or more to be medically examined by an occupational health specialist to confirm whether he or she is capable of returning to work and/or ascertain whether there is anything that the School can do to facilitate an employee's return to work.

26. The School will review the position periodically. Ultimately, it may become necessary from a business perspective to consider termination of employment on the grounds of incapability. In these circumstances, the School will:-

- review the employee's absence records to assess whether or not it is sufficient to justify dismissal;
- consult with the employee;
- obtain up to date medical advice;

- advise the employee in writing as soon as this is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- consider whether there are any other jobs that the employee could do prior to taking any decision regarding dismissal;
- allow a right of appeal against any decision to dismiss the employee on the grounds of long term ill health.
- arrange a further meeting with the employee to determine any appeal; following this meeting, inform the employee of its final decision; and
- act reasonably towards the employee at all times.

Updated by Mrs CY Gammon: August 2017

Approved by Board of Governors: 16<sup>th</sup> October 2017