

Hartismere School



Capability of staff

Policy No 16

Contents

1. Aims	2
2. Legislation and guidance	3
3. Definitions	3
4. Roles and responsibilities	4
5. Capability procedure	5
6. Right to appeal.....	7
7. Confidentiality	8
8. Consistency of treatment and fairness	8
9. Monitoring arrangements	8
10. Links with other policies	Error! Bookmark not defined.
Appendix 1: capability action plan template	9

1. Introduction

Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected.

This school seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. This procedure ensures that the school has a fair and consistent framework for dealing with capability matters effectively, consistently and in a timely matter to ensure that no individual is discriminated against.

This policy sets out the procedure that must apply in cases of capability. Its emphasis is one of support and it is important that the right procedure is used according to the situation under review.

The Capability Procedure is designed to:

Encourage staff to meet agreed standards of behaviour, conduct and job performance

- Deal fairly and consistently with staff who do not improve to meet those standards and identify ways to help them improve
- Be applied in a consistent, fair, prompt and supportive way.

For a variety of reasons, the performance of an employee may give rise to concern because the evidence suggests that s/he is unable to carry out the duties and responsibilities of his/her post to a professionally acceptable standard, through lack of capability, aptitude, skill or ability and not through any lack of willingness or effort on his/her part. Where the employee concerned fails to carry out his/her duties and responsibilities to a reasonable and acceptable standard for reasons of his/her capability, the procedure set out in this document should be used. One important factor will be the impact of the employee's performance on pupils' achievement, progress and well-being.

Another reason for concerns about performance may be genuine but unacceptable absence due to ill-health. This may affect the long-term ability for employees to continue to carry out the requirements of the role and may have a detrimental effect upon service delivery. In such

circumstances, the issues should be addressed in accordance with the absence management procedures.

This policy has been modelled after that of Suffolk County Council. The policy will be reviewed as may be required by legislative or organisational change.

2. Scope

This procedure applies to all teaching and support staff (including those seconded to other schools or organisations) in which the governing body has adopted them for use.

Where the concerns relate to the Headteachers, the Chair of Governors will manage the procedure and, where concerns persist, will convene a Special Committee of the Governing Body (which should not include any governors from the Appeals Committee) to determine what action should be taken. The Committee will proceed in all other stages of this procedure. The committee will carry out those functions normally undertaken by the Headteachers/line manager. A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

3. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

4. Exclusions

Disciplinary procedures exist to deal with misconduct, willfully deficient performance, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.

The assessment and treatment of employees undergoing an induction or probationary period (including Early Career Teachers), or similar, will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

5. Legislation and guidance

This policy is based on the Department for Education's model policy and guidance, and the Acas code of practice on disciplinary and grievance procedures.

When carrying out capability procedures, we will ensure we abide by the Equality Act 2010.

7. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to '**staff**' include the headteacher, teachers and support staff, unless indicated otherwise.

8. Purpose

Good performance management is an all-year process, with regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

In many cases, the right word, at the right time and in the right way may be all that is needed to address poor performance. Managers must, in the first instance, seek improvement through normal performance management. This should include two-way discussion, with the objective of encouraging and helping the employee to improve and for the improvement to be sustained. Although there is no right for the employee to be accompanied at this stage, it may be helpful for the employee's Trades Union representative to be involved at an early stage.

The purpose of the Capability Procedure is to:

- 1) Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified they are not performing to the required standard
- 2) Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- 3) Contribute towards the improvement of the performance and effectiveness of the school
- 4) Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- 5) Ensure the employee is aware of each stage of the procedure and the possible outcomes
- 6) Ensure all stakeholders receive services of the highest standard

9. Roles and responsibilities

Where the member of staff subject to the procedure is the headteacher, the chair of governors will be responsible for coordinating the procedure.

Where the member of staff subject to the procedure is not the headteacher, the headteacher or a nominated member of senior staff will be responsible for coordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

10. Normal Performance Management Arrangements

Informal feedback on performance does not form part of this procedure as this should be given through 'normal performance management arrangements' i.e. performance review meetings, one to one meetings, etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at the required standard – this must include:

- confirmation of the required standard,
- the standard the employee is currently performing at,
- an agreement of how the required standard will be achieved and the consequences if standards are not achieved.

Every effort should be made to resolve performance issues on an informal basis.

Where concerns continue, discussions should include clear advice about the improvements needed, support available and how and when the employee's performance will be reviewed. This should be confirmed in writing and, where appropriate, may be linked to the Performance Development Review process and pupil progress evaluation processes.

11. Capability procedure

Formal capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered. Evidence of this will be available before the process begins.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

12. Timescales

Capability issues should normally be resolved within ten to twelve weeks. However, it is acknowledged that there may be circumstances when the process will take longer to complete. These may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010.

13. Formal capability meeting

Notification of a formal capability meeting should not come as a surprise to the staff member concerned, as they will already have been receiving informal support to improve their performance.

The staff member will receive at least 5 working days' notice of the formal capability meeting. The notification will contain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting

- That the staff member has the right to be accompanied by a work colleague or trade union representative

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

The formal capability meeting will be conducted by the Headteacher or the chair of governors for headteachers.

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

13.1 Possible outcomes

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the appraisal process.

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the Teachers' Standards or other relevant standards, career stage expectations and/or job description
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed
- Warn the teacher formally that failure to improve within the set period could ultimately lead to dismissal

13.2 After the meeting

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

13.3 Monitoring and review period

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting.

The member of staff will be invited to 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 5.4 below).

13.4 Formal review meeting

At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.

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
- If no or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final written warning

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 be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The staff member will be invited to a decision meeting.

13.5 Decision meeting

At least 5 working days' notice will be given of the decision meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If an acceptable standard of performance has now been achieved, the capability procedure will end and the appraisal process will restart.

If the staff member's performance does not improve to a sufficient standard, a decision, or recommendation to the governing board, may be made that the staff member should be dismissed or required to cease working at the school.

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
- Their right of appeal

13.6 Dismissal

The power to decide that members of staff should no longer work at this school rests with the governing board.

The power to decide that members of staff should no longer work at this school has been delegated to the headteacher.

14. Right to appeal

If a staff member 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 will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and by senior leaders, governors or trustees who have not previously been involved in the case.

The staff member will be informed in writing of the results of the appeal hearing within 5 working days.

15. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality assure the operation and effectiveness of the system.

16. Consistency of treatment and fairness

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

17. Monitoring arrangements

The effectiveness of this policy will be monitored by the headteacher and governing board.

This policy will be reviewed every 3 years, but can be revised as needed.

This policy will be approved by governing body.

Appendix 1: capability action plan template

This template can be used as part of the process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

NAME OF STAFF MEMBER	NAME OF APPRAISER	DATE OF MEETING

OBJECTIVE 1:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 2:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress

OBJECTIVE 2:		
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 3:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Other support provided

MENTOR/COACH ALLOCATED	YES/NO (IF YES GIVE NAME)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

SIGNED BY MEMBER OF STAFF	SIGNED BY APPRAISER	DATE

Appendix 2

Procedure for a hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put his/her case.

The conduct of the hearing is at the discretion of the Headteachers, Chair of the committee or manager hearing the case, but s/he will allow the parties every reasonable opportunity to present their case.

In the case of an appeal, the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

Introduction

The Headteachers, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

Presentation of the Case

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions. S/he will then call any witnesses and ask them to give their evidence. The employee or his/her representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness. Where evidence is presented in the form of documents, the person presenting the case, or an appropriate witness, will explain the nature and significance of the documents.

The Employee's Case

The employee or his/her representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions. S/he may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after s/he has given his/her evidence. The person or committee hearing the case may then ask questions. The employee or his/her representative may re-examine the witness. Where there is any documentary evidence, the employee or any witness on his/her behalf will explain its significance. Re-examination Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

Final Statements

The person presenting the case against the employee may make a final statement. The employee or his/her representative may then also make a final statement. Adjournment Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it. Consideration of the Case All parties will withdraw. The Headteachers or the committee will deliberate.

Decision

The decision will be confirmed in writing to the parties involved as soon as possible after the hearing

General principles underlying this policy

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

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteachers and governing body to quality-assure the operation and effectiveness of the appraisal system. In order to achieve this, for example, the Headteachers or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Headteachers might also wish to be aware of any pay recommendations that have been made.

Consistency of Treatment and Fairness

The Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The governing body is aware of the guidance on the Equality Act issued by the Department for Education. <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

Definitions

Unless indicated otherwise, all references to "teacher" include the Headteachers. Delegation Normal rules apply in respect of the delegation of functions by the CEO, governing bodies, Headteachers and local authorities.

Grievances

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 only under the most extreme circumstances e.g. in relation to allegations of sexual assault pertaining to an appraiser. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be (e.g. referred immediately to the occupational health service to assess the member of staff's health and potential fitness for employment and the appropriateness or otherwise of continuing with monitoring or formal procedures). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing body and Headteachers will monitor the operation and effectiveness of the school's appraisal arrangements. Retention The governing body and Headteachers will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.