



"Unlocking potential through learning"

Capability Procedure Policy

**New Horizons
Learning Centre**

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Signed by: Donna Portingale

Position: Chair of Governors

Capability Procedure for Staff

1. INTRODUCTION AND PURPOSE OF THIS PROCEDURE

- 1.1 This procedure applies to all school employees and will be followed when an employee fails to achieve or maintain an acceptable level of performance and where prior informal intervention has not rectified the problem. The exceptions will be teachers undertaking their statutory induction period and support staff serving a contractual probation period, in which case separate procedures apply.
- 1.2 Governing Bodies have a statutory obligation to have in place a capability procedure for teaching staff and this must have regard to guidance from the Secretary of State. This procedure incorporates the relevant guidance.
- 1.3 The principal aim of this procedure is to enable the employee to meet and sustain satisfactory standards through guidance, training and support. It is also in the employee's own interest to seek assistance at the earliest possible time over any problem which might affect his/her performance. The importance of full and open discussion between the Headteacher/Line Manager and employee at all stages, with a willingness to establish a shared understanding of the perceived problems and their solution cannot be over-emphasised.
- 1.4 Where significant concerns about performance arise, it is essential that these are made known to the employee at the earliest opportunity. In many cases, it will be possible to overcome difficulties through prompt intervention, which may involve discussion with the employee and his/her Professional Association or Trades Union representative prior to commencing the formal procedure.
- 1.5 In any event prior to invoking this procedure it is expected that there will have been appropriate supportive action by the Headteacher/Line Manager. This will include ensuring that the employee:
 - Is clear about their role and responsibilities and has a relevant job description
 - Has received appropriate induction/probation support on taking up a new post, whether or not this is a statutory or contractual requirement;
 - Understands any additional expectations or standards that relate to his/her role and responsibilities;
 - Has received appropriate supervision (including structured performance management reviews) and has previously been made aware of any areas of concern;
 - Has received advice about how to overcome these concerns and been provided with relevant training or developmental support.

- 1.6 Where it is considered that the employee's performance is unsatisfactory because of a wilful refusal to carry out duties or to perform them to an acceptable standard, the matter may be treated as misconduct and the Disciplinary Procedure may then apply. Any sanctions taken under the Disciplinary Procedure may have regard to relevant steps taken under this Capability Procedure and vice versa.

2. ROLES AND RESPONSIBILITIES

- 2.1 This procedure will normally be carried out by the Headteacher or, in appropriate circumstances, by a designated Senior Line Manager. Where the concerns are about the Headteacher's performance the term 'line manager' will refer to the Chair of Governors and/or other designated governors. In this situation the expectation is that professional advice will be provided by the Local Authority.
- 2.2 The person responsible for managing the procedure will have responsibility for issuing any relevant warnings under this procedure up to the point of recommending dismissal.
- 2.3 In accordance with the School Staffing Regulations, the Governing Body has the right to delegate to the Headteacher the power to determine dismissal. However, if the Headteacher is to be involved in managing the earlier stages of the procedure then, applying the principles of 'natural justice', he/she should not also take the initial dismissal decision.
- 2.4 In most cases, any proposal to dismiss the employee will be considered by a panel of 3 governors nominated by the Governing Body. Any appeal hearing will be conducted by a second panel comprised of at least the same number of different governors.
- 2.5 Any appeal against the issue of a written warning under this procedure will be conducted by a nominated panel of 3 governors.
- 2.6 The Headteacher may report to the Governing Body that the capability procedure has been invoked as a confidential staffing item. Further details must not be discussed as this may prejudice the position of governors at any subsequent hearing or appeal that may be required.
- 2.7 The Local Authority has an obligation to report to the GTC (General Teaching Council) where a teacher is dismissed or resigns in circumstances arising from serious concerns about his/her professional competence. The Local Authority will notify the teacher if any such report is to be made.

3. GENERAL POINTS OF PROCEDURE

- 3.1 Where it is proposed to invoke this procedure a copy will be provided to the employee and he/she will be advised to contact his/her Professional Association or Trades Union Representative.
- 3.2 At all stages of the procedure the employee must be given at least 5 working days written notice of any formal meeting. The letter will include clarification of the purpose of the meeting, brief details of the matters to be considered, who will attend and copies of any relevant documentation.
- 3.3 The employee is entitled to be accompanied by a Professional Association/Trades Union representative or a workplace colleague at any formal meeting at each stage of this procedure. The right of accompaniment will not apply to any intermediate supervisory or review meetings that may take place between these formal meetings but may be considered on request from the employee.
- 3.4 Where this procedure is invoked and a Notice of Improvement or other written warning is issued, the statutory performance management arrangements (in the case of teaching staff) will be suspended for the duration of the procedure. Any school based performance review system for support staff will be similarly suspended.
- 3.5 Although there is no obligation to do so, it is recommended that the Local Authority (Schools' Personnel and School Improvement Partner) should be informed when capability procedures are to be invoked so that appropriate advice can be provided. In any event the Local Authority must be notified prior to any hearing at which dismissal may be considered.
- 3.6 Where warnings are issued under this procedure they will remain current for the following periods:
Notice of Improvement or Formal Written Warning – for one year
Final Written Warning – for two years

This means that if further concerns arise within these timescales the procedure may recommence at the appropriate stage.

4. TIMESCALES

- 4.1 There are no prescriptive timescales for the different stages of this procedure. The time allowed for improvement will depend upon the nature and complexity of the post, the seriousness of the concerns (including any risks to the safety and welfare of pupils or colleagues) and the level of support to be provided.
- 4.2 For teaching posts the DCSF procedural guidance expects that the formal capability procedures will not normally extend over a period of more than two (old) terms.

- 4.3 This procedure will normally be worked through sequentially. However, in exceptional circumstances - where there are serious concerns, the Headteacher/Line Manager may move directly to a later stage.
- 4.4 For staff in short-term employment (ie. a temporary post of less than one year's duration) the principles of this procedure should be applied but may be accelerated to respond to the specific circumstances of the employment.
- 4.5 The written outcome of any Formal Meeting will be provided to the employee within 5 working days of the meeting taking place.
- 4.6 Any appeal against the issue at a Formal or Final written warning or dismissal decision must be requested in writing within 5 working days of the written notification being received.

5. PROCEDURE

5.1 First Formal Meeting –

- 5.1.1 The employee will be invited to attend a meeting with the Headteacher/Line Manager who will clarify the perceived weaknesses or concerns and review the action taken or support provided, taking account of any observations from the employee and any relevant factors such as workload, personal or health matters.
- 5.1.2 The Headteacher/Line Manager may decide that:
- a) No further action is required; or
 - b) There is a need to provide suitable support, training or guidance outside of this procedure; or
 - c) There is a need for a Notice of Improvement to be issued. In this case the Notice will identify
 - Areas for improvement
 - Success criteria
 - The structured support or training to be provided
 - The timescale for improvement and the monitoring and review arrangements that will apply

5.2 Second Formal Meeting -

- 5.2.1 This meeting will normally be held to review progress under the Notice of Improvement in accordance with the specified timescale.

The Headteacher/Line Manager will consider progress in relation to the areas of improvement and support plan previously identified. A decision on further action will be taken having regard to the progress made and any other relevant factors that may emerge from the meeting.

5.2.2 The Headteacher/Line Manager may decide that:

- a) The necessary improvement in performance have been made and that no further formal action is required; or
- b) There should be a further defined period with relevant support training or guidance being provided; or
- c) There are continuing concerns about significant aspects of the employee's overall performance and/or the employee's capacity to maintain acceptable standards without additional support. In this case the employee will be issued with a Formal Written Warning.

5.2.3 The Formal Written Warning will make clear:

- the areas of continuing concern
- any further support training or guidance to be provided
- the arrangements for further monitoring of performance
- the date by which there will be a formal review of outcomes
- the right of appeal.

5.2.4 Where the employee is a teacher, the monitoring of performance at this stage will normally include observation and feedback by an appropriate subject and/or key stage specialist provided by the Local Authority.

5.3 Third Formal Meeting -

5.3.1 The purpose of this meeting is to review progress against the requirements and timescale set out in the Formal Written Warning. It will assess the employee's ability to reach and maintain the required level of performance having been provided with appropriate support and the opportunity to demonstrate how this has been applied in the workplace.

5.3.2 The Headteacher/Line Manager may decide that:

- a) The necessary improvements have now been demonstrated and that no further formal action is required; or
- b) A specified period of further monitoring is appropriate; or
- c) The level of performance remains unacceptable and that the employee should be issued with a Final Written Warning.

5.3.3 The Final Written Warning will make clear:

- the areas of performance that remain unsatisfactory;
- the date at which there will be a final formal review of performance;
- that failure to meet the required level of performance may lead to dismissal;
- the right of appeal.

5.3.4 Where such discussions have not already occurred, it may be appropriate to explore options with the employee at this stage. For example where the employee is failing to meet the requirements of a 'promoted' post, it may be appropriate at this stage to consider and clarify if demotion to a lower graded post in the school is an option.

5.3.5 The employee should have the opportunity to discuss any proposal involving a change to their salary or contractual position with their professional association/trade union representative. Schools' Personnel section may also be consulted.

5.4 Fourth Formal Meeting (Final Review)

5.4.1 At this meeting there will be a final assessment of the employee's performance and the Headteacher/Line Manager will decide if the concerns about performance are such that dismissal is now to be recommended. In appropriate circumstances, the alternative of demotion to a lower graded post may be considered and proposed.

5.4.2 Where dismissal is to be recommended, the employee should be notified in writing and arrangements made to convene a dismissal hearing at the earliest opportunity. The employee will normally be removed or suspended from his/her normal duties pending the outcome of the hearing.

5.5 Dismissal Proceedings

5.5.1 The hearing at which dismissal is to be considered will normally be conducted by a nominated panel of not less than 3 governors. The hearing may exceptionally be conducted by the Headteacher, if he/she has been given delegated responsibility by the governing body and has not been involved in earlier proceedings.

5.5.2 Written notice of the hearing arrangements and copies of relevant documentation will be provided to the employee accordingly and he/she may be accompanied as provided for throughout this procedure.

5.5.3 The Headteacher/Line Manager will attend, as appropriate, to present the management case. A Local Authority representative (normally a senior member of the Schools' Personnel section) has the right to attend for the purposes of providing advice to the Panel.

5.5.4 The outcome of the hearing may be that:

- there is no case to answer;
- a further period of support and/or monitoring should be provided;
- the employee should be demoted to a lower graded post within the school;
- the employee should be issued with notice of dismissal.

5.5.5 The outcome of the hearing will be notified in writing to the employee and, where appropriate, will set out the arrangements for lodging an

appeal. The grounds for an appeal must be provided in writing prior to the appeal hearing.

- 5.5.6 Formal notice of dismissal will be issued, where applicable, by the Local Authority on receiving instructions from the Governing Body. The relevant period of paid contractual notice will apply during which it will normally be appropriate for the employee to be removed or formally suspended from his/her normal duties if this has not already occurred.
- 5.5.7 Any necessary appeal hearing should be conducted as soon as possible after the initial decision has been confirmed but having regard to the timescale and procedural requirements set out elsewhere. In the event of the employee being reinstated, then notice of dismissal (if already issued) will be withdrawn.
- N.B. In Voluntary Aided schools the Local Authority may only attend the dismissal hearing if advisory rights have been granted (para. 5.5.3). Notice of dismissal will be issued by the governing body (para. 5.5.6).