



# **CAPABILITY POLICY**

## **(For School-Based Employees)**

**Written by:** FGB/ Local Authority

**Ratified:** Autumn 2016

**To be reviewed:** Annually

**Next Review:** Autumn 2017

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## **SECTION 1      OUTLINE OF POLICY**

### **1.      INTRODUCTION**

- 1.1 This policy is designed to ensure that an employee whose standard of performance falls below the expected standard is clearly informed of what standards are expected and receives support towards achieving those standards.
- 1.2 This policy has been developed to assist the governing body, Executive Head, Head of Schools and managers to manage the capability of staff who work within their schools.
- 1.3 The purpose of this Capability framework is to ensure that pupils and students receive their entitlement to a high-quality educational provision. It requires that the educational offer made by school management, employees and support staff meets pupil and student needs, and aims to provide a fair and consistent process to bring about improvements in the accuracy and quality of work, where improvement is needed.
- 1.4 Governors/ Executive Head/ Head of School have a right to expect high-quality performance from staff, and members of staff have the right to expect appropriate support for their present and continuing professional development (CPD) needs.

### **2.      SCOPE**

- 2.1 This policy covers all members of staff who are employed within a school on a permanent, fixed-term or secondment basis, including Executive Head/ Head of School, with the exception of:
  - a) Support staff on probation who are covered by the Probation policy
  - b) Newly Qualified Teachers (NQTs) who are covered by the Induction policy.
  - c) For the avoidance of doubt, this policy does not apply to agency workers

### **3.      APPLYING THE POLICY**

- 3.1 This policy and procedure should be used when the quality of work of a member of staff fails to meet the expected standard. However, if poor performance is due to wilful intent, sickness or disability, or is the result of drug or alcohol use, then, other policies may apply.
- 3.2 In applying this procedure, it is important to distinguish between capability and disciplinary matters.

- 3.2.1 Generally, the Disciplinary policy and procedure applies when a member of staff is capable but underperforming for a variety of reasons.
- 3.2.2 The Capability policy and procedure applies when acceptable performance standards are not met due to professional incapability.

## **4. KEY PRINCIPLES**

The following principles apply:

- 4.1 This policy does not replace the normal day-to-day interaction between an employee and the Executive Head/ Head of School on issues of performance. It should only be used when options such as regular one to ones, supervision and annual appraisal have failed to produce a satisfactory result. It is therefore important to ensure that these mechanisms to review performance are in place and operating accordingly.
- 4.2 The policy set out in this document aims to ensure that there is:
- a) Assistance in identifying the most appropriate forms of support and providing that support.
  - b) A means of monitoring performance and establishing reasonable and appropriate performance criteria.
- 4.3 If an employee does not meet the required standard of performance any consequent action will be based on:
- a) Evidence that the employee is incapable of performing their duties satisfactorily.
  - b) Evidence that the employee knew of and was given reasonable support and assistance to overcome the shortfalls.
- 4.4 It is expected that the Executive Head/ Head of School/ senior member of the Leadership team will conduct the initial Support Period meeting as well at the Formal Capability meetings. Advice and guidance will be sought from your Traded HR provider at any point in the process.
- 4.5 Should the process progress to the final stage (Decision Meeting), and dependent upon the delegated responsibility for dismissals at each individual school, the Decision Meeting will be conducted by the Executive Head or by a Panel of three governors. At any Decision Meeting and Appeal Hearing the Executive Head (if chairing) or panel of governors will be accompanied and advised by a representative from their traded Human Resources provider.
- 4.5.1 For Community Schools only when the process has reached the Decision Meeting and Appeal Hearing a representative of the Local Authority may also attend the meeting should dismissal be a possible outcome.
- 4.6 In serious capability cases where the safeguarding or education of pupils is jeopardised the School reserves the right to suspend the employee

immediately. A full investigation will then be required to determine whether it is a lack of capability and whether this is the correct policy to apply. In these situations the Executive Head/ Head of School will take advice from their traded HR Provider.

- 4.7 Any decision to initiate the formal stages of this procedure will be taken only after application of the School's Appraisal policy and with proper safeguards for the member of staff.
- 4.8 A support period of coaching and counselling should normally be adopted before formal action is implemented.
- 4.9 An employee has the right to appeal against a sanction issued under the Formal Process. However the submission of an appeal will not halt the progress of any Formal Review Period which will run concurrently with the appeals process.
- 4.10 The provisions of the Equality Act 2010 will be applied throughout the implementation of this Policy. .
- 4.11 In some underperformance cases where possible, consideration will be given for reasonable adjustments to the employee's role/ working pattern/working environment etc on either a short or long period with the aim of preserving the employment of the individual. Advice should be sought from the School's traded HR provider.
- 4.12 If issues of underperformance relate to a Trade Union/Professional Association representative, the union's senior local convenor and regional officer must be notified. No further action should be taken until they have been informed.

## **5. ROLES AND RESPONSIBILITIES**

### **5.1 Employee Responsibilities**

Demonstrate the level of commitment required to improve performance, including taking all reasonable steps to maintain/update skills levels.

- a) Achieve an acceptable and sustained level of performance.
- b) Seek help with any work problem.
- c) Understand the Capability policy and procedure.
- d) Co-operate with any investigation into capability, and any further action that may result from such an investigation.
- e) Attend all relevant counselling, support or review meetings.
- f) Inform the appropriate person, in writing, of any wish to appeal against a decision taken under the formal stage of this procedure

## **5.2 Management Responsibilities - Governors//Executive Head/ Head of School**

In respect of any member of staff they manage, all managers have responsibility to:

- a) Ensure standards of work are established for every member of staff and that current and agreed job descriptions are in place.
- b) Advise, coach and support staff to ensure the role and the required standard of performance is understood.
- c) Ensure appropriate induction and CPD is provided.
- d) Set and monitor standards of performance and provide feedback to assist staff in achieving the required levels of performance.
- e) Ensure staff understand the procedure and their rights if it were to be applied.
- f) Take action promptly and ensure that performance problems are addressed within the appropriate timescales.
- g) Investigate problems of work performance that may lead to formal action under the procedure, gathering evidence of the shortfall and of the support provided.
- h) Keep written records of performance concerns and actions taken at all stages of the procedure.
- i) Ensure the correct procedures are followed and that all correspondence regarding the capability concerns are stored in line with the Data Protection Act 1998.

## **5.3 Human Resources London Borough of Waltham Forest (LBWF) Responsibilities**

5.3.1 As the Local Authority representative, attend any hearing which may result in the dismissal of a member of staff where LBWF is the employer.

5.3.2 Provide high level advice as appropriate to the Chair of Governors if the capability of an Executive Head is to be considered.

## **5.4 Human Resources Service Provider Responsibilities**

- a) Advising and supporting the Executive Head, Head of School and Governors in the application of this policy.
- b) Attending in an advisory capacity at formal hearings / appeal hearings

## **6 ACCOMPANIMENT, REPRESENTATION AND REQUESTS FOR POSTPONEMENTS**

- 6.1 Agreement will be sought for the date and time of any meeting but this may not be possible in all cases. Therefore the employee or their representative is unable, for good reason, to attend the Formal Capability Meeting on the date proposed, the Executive Head/ Head of School in consultation with the trade union representative will reschedule the meeting to take place normally no later than 5 working days after the date of the original meeting.

## **SECTION 2 OUTLINE OF PROCESS**

### **1.0 SUPPORT PERIOD**

- 1.1 Concerns about performance will be raised through the Appraisal process (see the School Appraisal Policy) and where necessary a support period will be initiated prior to any formal action under this procedure.
- 1.2 The support period following performance concerns raised during appraisal would be as detailed in points 1.3 to 1.7.
- 1.3 Where concerns are raised during the appraisal the Executive Head/ Head of School /Senior member of the Leadership Team will convene a meeting with the employee. An employee would not normally be accompanied at this meeting. At the meeting the Executive Head / Head of School/ Senior member of the Leadership Team will:
- a) Outline the specific performance shortcomings,
  - b) Explore the reasons for underperformance (is it work or non-work related?),
  - c) Explain the standards expected,
  - d) Agree the performance standards required (Performance Improvement Plan) and the timeframe (the 'Informal Review Period') in writing,
  - e) Decide on the support that is required and to ensure that it is targeted/appropriate to the individual's needs.
  - f) Ensure SMART targets are set.
- 1.3 The employee must be supported for a period of time which is reasonable considering the role and the nature of the shortcoming(s). Where possible an agreement will be sort for the length of period required for each individual case. This would normally be between 6 and 8 weeks, however where there are serious capability concerns the Executive Head/ Head of School will have the discretion to use shorter timescales.
- 1.4 There will be interim review meetings to assess progress against the employees Performance Improvement Plan. These will take place at regular intervals during the Informal Review Period.

- 1.5 A date must also be set for a meeting to review progress at the end of the Support Period. Depending on progress, this meeting will serve one of two purposes:
- a) Where the employee's performance improves to the standard required the employee should be informed of this and also reminded of the need to maintain the improved standard.
  - b) If the employee's performance does not reach the standard required this meeting will inform the employee that the process is moving to the Formal Process under the school's capability procedure. A letter should be issued to the employee inviting them to a Formal Capability meeting to take place 5 working days after the date of the review meeting.
- 1.6 It is important that the employee is made aware of the consequences of the failure to improve and if performance remains unsatisfactory at the end of the Support Period then the Formal Process will be commenced, which could result in the issue of a First Written Warning.
- 1.7 The outcome of the Support Period including the various review dates will be confirmed in writing within 5 working days. A copy of this letter should be held on the employees personnel file.

## **2.0 FORMAL CAPABILITY MEETING**

- 2.1 This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Executive Head capability meetings) or Executive Head/ Head of School (for other employees). The meeting allows the employee to be accompanied by a companion or trade union representative, 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.
- 2.1.2 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 appraisal process. In such cases, the capability procedure will come to an end.
- 2.1.3 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.
- 2.1.4 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:
- a) identify the professional shortcomings, for example which of the standards expected of employees are not being met;



- b) give clear guidance on the improved standard of performance needed to ensure that the employee 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);
- c) explain any support that will be available to help the employee improve their performance;
- d) 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 should be up to ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and
- e) afford the employee the opportunity to provide evidence on their performance.
- f) warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

2.1.5 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the employee 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.

## **2.2 Monitoring and review period following a Formal Capability Meeting**

2.2.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will be given during this period. Any observations during this period should be focused on the areas identified for improvement

2.2.2 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 below).

## **2.3 Formal review meeting**

2.3.1 The person conducting the meeting will review what improvement has been made as a result of this:

- a) If the expected standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.

- b) 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; A further review meeting will need to take place at the end of any extended/further review period.
  - c) If insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning and they will move to the next stage of the procedure (Decision Meeting).
- 2.3.2 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.
- 2.3.3 Where a final warning is issued, the member of staff will be informed in writing that failure to achieve the expected standard of performance (within the set timescale), may result in dismissal.

### **3.0 DECISION MEETING**

- 3.1 The decision meeting will be chaired by either the Executive Head with the authority to dismiss (providing the Executive Head has not already been involved in the process) /Panel of 3 Governors. .
- 3.2 The Executive Head/Panel of Governors will consider:
- a) the process that has been followed at all stages of the procedure.
  - b) any reasonable alternatives to dismissal,
  - c) recommendation for dismissal due to the employee not meeting the expected standard.
- 3.3 Before any decision to dismiss is made, the school will discuss the matter with the local authority (*N.B. this is not a legal requirement but schools may find it helpful*).
- 3.4 The employee 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 or payment in lieu and their right of appeal.

See Attached letter – Appendix 1

### **4.0 APPEAL**

- 4.1 If an employee 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 of the decision, setting out at the same time the grounds for appeal.
- 4.2 Appeals will be heard without unreasonable delay

- 4.3 The appeal will be dealt with impartially and, wherever possible, by a panel of Governors who have not previously been involved in the case.
- 4.4 The employee will be informed in writing of the results of the appeal hearing as soon as possible.

## **SECTION 3    General Information**

### **1.0 Confidentiality**

- 1.1 Confidentiality should be maintained by all those involved, including the member of staff, at all stages throughout the Capability procedure by ensuring that only those people who need to know have access to details
- 1.2 While respecting confidentiality, it is important that the member of staff is free to discuss issues with their trade union representative or work colleague who may be able to assist or support them through what is acknowledged to be difficult circumstances.
- 1.3 Written records of capability issues will be treated as confidential and kept no longer than is necessary in accordance with the Data Protection Act 1998.

### **2.0 Sickness During The Process**

- 2.1 Reasonable steps should be taken to enable attendance at meetings and hearings, certified absence and entitlement to sickness pay do not of themselves represent grounds for deferring this framework.
- 2.2 A member of staff who is medically unfit to attend a meeting or hearing must provide a medical certificate stating physical incapability of attending and/or inability on mental or psychological grounds to participate reasonably in the proceedings.
- 2.3 The Chair of the Panel will consider whether the meeting or hearing should go ahead in the absence of the individual. A considerate, sympathetic approach should be adopted but in general any justification for delay should be discussed with Occupational Health (OH) and HR.
- 2.4 If a meeting or hearing is to go ahead in the absence of the member of staff, the member of staff and the relevant trade union representative or work colleague should be notified, giving at least 5 working days' notice of the meeting. In such circumstances a full account of the meeting or hearing should be provided to the member of staff in writing, confirming any decision taken.

2.5 If sickness absence occurs during the Capability procedure. Short absences would not normally delay any part of the procedure. Where there is longer term absence advice will be sought from occupational health.

Appendix 1

PRIVATE AND CONFIDENTIAL

To: Schools HR Team

Dear

DETERMINATION - CEASE TO WORK

EITHER

I am writing to advise you that at a disciplinary hearing heard by a Panel of Governors at **(name)** School held on **(date)** determined that **(name of employee)** should cease to work at the school with immediate effect by reason of \*gross misconduct/cumulative misconduct, sickness or capability.

I am writing to advise you that at a disciplinary hearing heard by the Head Teacher of this School held on **(date)** the Head Teacher determined that **(name of employee)** should cease to work at the school with immediate effect by reason of \*gross misconduct/cumulative misconduct, sickness or capability. I should be grateful if, in accordance with the School Staffing Regulations, you would terminate the contract of employment and confirm the effective date of termination to the employee.

I will notify you in due course should this employee appeal against the determination and the Appeal Committee uphold the appeal.

Yours sincerely

Chair of Governors

\* delete as required