



The Marlborough Science Academy

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CAPABILITY PROCEDURE GP 51	
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Sep 2023			

Other policies and procedures linked to this policy:

Health and Attendance Policy

Probationary Review Policy

Disciplinary Policy

Performance Management Policy

1. Introduction

This procedure has been produced in consultation with the professional associations/trade unions and is recommended for adoption by HfL. For schools that subscribe to the schools HR advisory service, an HR adviser is always available to provide guidance in relation to the implementation of this procedure.

This procedure applies only to teachers, Headteachers and support staff employed by the school where there are serious concerns about performance that have not been resolved through the appraisal process. It does not apply to newly qualified teachers or employees in their probationary period in respect of which there are alternative procedures in place.

This procedure does not form part of any employees contract of employment and it may be amended at any time.

Employees who are subject to the capability procedure are strongly advised to contact their trade union/professional association for support. A list of accredited county professional association and trade union representatives is available upon request from the school who can access this via the HR knowledge portal.

2. Purpose, scope and principles

A capability procedure is necessary for promoting fairness and order in the treatment of individuals and is designed to help and encourage all employees to achieve and maintain high standards of performance at work.

With the exception of very serious concerns, this procedure should only be followed when concerns have been identified over a reasonable period of time. In the first instance performance issues should normally be dealt with informally between the employee and line manager as part of day to day management. It would not usually be appropriate to react to one observation that falls below expectations by invoking this procedure. In such cases detailed feedback and appropriate support should be given to ensure that the concerns are understood and can be acted upon. It is reasonable to follow up a weak observation by undertaking another to give an employee a chance to show it was a one-off. A reasonable period of time (at least a week) should be allowed for the individual to reflect on the observation and any support or advice given before a follow up observation is carried out.

Concerns raised about performance as well as support and advice given at all stages should be well documented.

Relevant training should be considered, noting that training can take many forms and does not have to be external.

At every formal stage in the procedure, the employee will:

- be advised in writing of the nature of the performance concerns
- have the right to be accompanied by their accredited trade union/professional association representative or work colleague
- be given 5 working days' notice of any formal meeting
- have a right of appeal against any penalty imposed

3. Misconduct

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases the disciplinary procedure should be used rather than the capability procedure.

4. Right to be accompanied

An employee has the right to be accompanied and supported, at each formal stage of the procedure (including appeal), by a work colleague or an accredited professional association/trade union representative.

The employee should provide the name of their representative within 2 working days of the meeting. Where the chosen companion is unavailable on the day scheduled for the meeting, the employee may request that the meeting be rescheduled to an alternative time that is reasonable and within 5 working days of the scheduled date.

If the employee is unable to attend a meeting within 5 working days the meeting may take place in a timeframe at the Trust's discretion. If the representative remains unavailable, the employee may be asked to choose another representative.

During the meeting the companion may put the employee's case forward and confer with the employee however they may not answer questions on the employee's behalf or make any representations if the employee indicates they do not wish this

5. Informal management period

Before embarking on the capability procedure, management should ensure that through normal performance appraisal and management supervision:

- the employee has been alerted to concerns
- the employee has an agreed job description, which is fully understood and there is a clear agreed expectation of standards of performance
- a performance improvement plan (PIP) has been set with support and a timescale for review (usually between four to six weeks dependent upon the severity of the underperformance)
- a copy of this procedure has been given to the employee

6. The capability procedure

See Appendix 1 for a procedural flowchart

Where performance concerns have not been successfully addressed and managed using:

- the normal appraisal management channels; and
- informal methods

An assessment/investigation will be undertaken to decide if there are grounds for taking formal action under this procedure, including review of any records relation to the employees work performance.

7 Stage 1 - Formal capability meeting

The employee will be invited in writing to attend any formal capability meeting, the employee will be informed that the appraisal process is suspended and will no longer apply whilst the employee's performance is being managed under the capability procedure.

The employee must make every effort to attend formal meetings and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so (for example health reasons) a formal meeting will be convened in their absence and the decision taken based on the available evidence.

7.1 The meeting is intended to establish the facts. At this meeting the Headteacher or senior line manager (with the Headteacher's knowledge and agreement) will:

- identify the performance concerns, the support already given as part of the appraisal policy, the standards required and where the shortfall in their performance has occurred

- provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards)
- consider and discuss any causes and reasons for the shortfall including any reasons why the measures taken so far have not led to improvement. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance and/or refute the evidence presented if appropriate
- after reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the Headteacher or line manager will decide whether:
 - to move into a further period of monitoring without issuing a warning
 - to issue a first written warning
 - to issue a final written warning (serious cases only)

At which point the following will also apply:

- set a PIP and targets for the future standard of performance with agreed objectives set out showing clearly how these will be achieved and measured
- identify the support to be provided to assist the employee in reaching the required PIP (e.g. additional supervision, coaching, observing exemplar lessons) the employee should also be invited to suggest what support that they feel they may benefit from
- 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 should usually be six weeks or half a term. 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 significant improvement to take place
- notes must be taken of the meeting and a copy given to the employee within 7 calendar days of the meeting or as soon as reasonably practical.

If, following response from the employee, it is accepted that it is not appropriate to proceed with the formal capability process; the matter could be addressed via performance appraisal or relevant management support. Otherwise, the decision and reasons for it will be put in writing.

7.2 Monitoring and review period following a formal stage 1 capability meeting

A performance monitoring and review period will follow the stage 1 formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period and there should be an informal feedback meeting/s. At the end of the review period a letter will be sent to the employee advising either;

- that performance has improved to a satisfactory level and no further action will be taken
- the substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 2 capability hearing (or stage 3 if a final written warning was initially issued).

8. Stage 2 – formal capability hearing

The formal hearing allows the employee to respond to the assessment that his/her performance has failed to improve and to explain the failure. The stage 2 hearing may also be instigated if there is further evidence of poor performance during the period of the first written warning.

The employee must receive written notice of the meeting, at least five working days in advance by recorded delivery or delivery by hand of:

- the purpose, time and place of the meeting
- the areas in which the employee has not met the required performance standards set out in the PIP
- a copy of this procedure (if not provided previously)
- the right to be accompanied by a work colleague or their professional association/trade union representative (and no one else)
- details of who will be attending the meeting (e.g. head, employee, expert witness/es)
- relevant documentation (e.g. copies of objectives, the support provided, and capability/review meeting minutes)

8.2 Conducting a formal review meeting

Follow the guidelines set out in section 7.1

8.3 Outcome of the stage 2 formal review meeting

There are three possible outcomes to the stage 2 meeting:

- outcome 1: Sufficient improvement, in which case the capability procedure will cease and appraisal process will resume
- outcome 2: There has been some improvement, and there is confidence that more is likely, but further support or monitoring is required and the monitoring, review period and PIP will be extended

- outcome 3: If no, or insufficient improvement has been made, the employee will receive either a first written warning if one wasn't issued at the commencement of the formal capability meeting or a final written warning

The decision will be confirmed in writing

8.4 Monitoring and review period following stage 2 capability hearing

A performance monitoring period will follow the stage 2 formal capability hearing. Formal monitoring, evaluation, guidance and support will continue during this period and there should be an informal feedback meeting/s. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken
- the substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 3 capability hearing.

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

9. Stage 3 formal capability hearing (the dismissal stage)

9.1 Where dismissal is a possible outcome, a panel of three governors will normally hear the case at this stage unless it is felt appropriate for the Headteacher to do so. If the case concerns the Headteacher a panel of governors would hear the case.

Copies of all relevant documents will be sent by the academy to the panel members before the meeting

9.2 At any meeting where dismissal is to be considered, the academy may invite an HR adviser from their HR service

- the role of the HR Adviser is to provide professional advice and support to the panel., they are not a decision maker in the process

Dismissal on the grounds of capability shall be with notice.

The outcome will be confirmed in writing to the employee as soon as reasonable practicable and usually within five working days.

10. Appeals

An employee may appeal against any warning or dismissal at any stage within seven calendar days specifying the grounds of appeal. The school may reject any appeal where the grounds for appeal are not made clear.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose the original sanction.

The appeal hearing may be a complete rehearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the school's discretion depending on the circumstances of the case. The appeal panel can uphold or reduce the original sanction but cannot increase the original sanction imposed.

If an appeal is not made within seven calendar days the school will assume the employee accepts the decision. The decision of an appeal panel at each stage will be final and will be reported to the governing body. The outcome of the appeal will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

11. Duration of warnings

In circumstances where a written or final written warning is issued it will be placed on the employees personnel file normally for a period of 12 months, unless the employee is notified to the contrary. The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason the school reserves the right to extend the period of warning at their discretion.

After the active period the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future capability proceedings.

12. Disputes about the procedure

Where there is evidence of poor performance there will be no access to the grievance or harassment and bullying policies and procedures for matters related to the application of the capability procedure.

Where issues arise, for example identified support has not been provided; they should be raised during the support programme and at any subsequent formal meeting/hearing and appeal process.

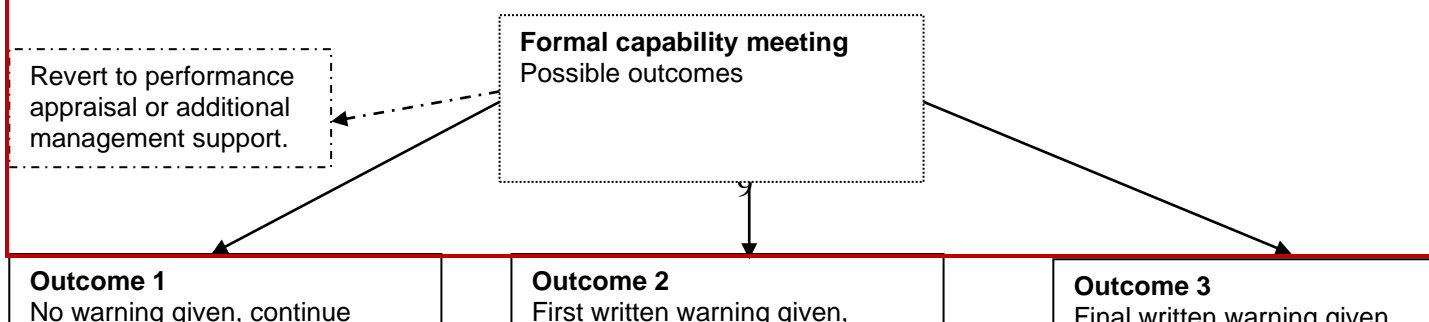
If the complaint concerns matters that are unrelated to the capability process, it can be raised under the Grievance Procedure.

13. Expiry of warnings and references

If an employee is subject to the capability procedure, or has a live warning in place at the time of a reference request, this must be referred to in any employment reference.

There may be occasions when an expired warning cannot be disregarded, such as where the performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where such a pattern emerges, an employee's record of previous warnings will be borne in mind in deciding how long any new warning will last or whether it is appropriate to undertake disciplinary action instead, on the basis that the employee has been able to previously demonstrate that capability is not in question.

Appendix 1 – Capability procedure flowchart



NB: There is a right of appeal against any warning and termination