

Capability Policy

Kingsway Primary School

Governor Committee Responsible:	James Hill	Staff Lead:	Lee Pajak
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1.0 Introduction

- 1.1 The Governing Board recognises the importance of good working relationships with its employees and seeks to ensure that concerns with capability are dealt with in a fair and timely way.
- 1.2 When an employee is not meeting the performance standards of their role or is not doing so consistently, this procedure provides a framework to manage employees' work to an acceptable standard in a consistent and supportive manner, and ensure these standards are sustained. Managers are responsible for the successful operation of this procedure with the school.
- 1.3 This policy sets out the measures available to managers in cases where the appraisal procedure has failed to achieve sufficient improvement in performance or where the matter is so serious that formal action is required.
- 1.4 It is based on the principles of the ACAS Code of Practice on disciplinary and grievance procedures and current employment and educational legislative requirements.
- 1.4 This policy applies directly to the following employees:
 - 1.4.1 Support staff: where there are concerns which informal action has been unable to address or which are serious enough to require formal action.
 - 1.4.2 Teachers: where there are concerns which the appraisal process has been unable to address or which are serious enough to require formal action.
- 1.5 This policy does not form part of an employee's contract of employment and is entirely non-contractual. It may be amended, withdrawn, suspended or departed from at the discretion of the school at any time.
- 1.6 Please note: if the school has purchased legal insurance which covers employment issues, it should refer to the terms and follow any requirements of the policy.

2.0 Governing Board expectations

- 2.1 School managers:
 - 2.1.1 regularly review the performance of employees and respond to any situations where an employee's performance is unacceptable
 - 2.1.2 give employees regular feedback
 - 2.1.3 have early discussions with the employee about problems, possible causes and solutions
 - 2.1.4 support the development of employees.
- 2.2 Employees:
 - 2.2.1 maintain acceptable standards of attendance, job performance and conduct
 - 2.2.2 take responsibility for their own development
 - 2.2.3 raise with their manager any problems that are affecting their work as soon as possible
 - 2.2.4 accept responsibility for their own work performance

2.2.5 respond constructively to advice, guidance and development provided by their manager

2.2.6 are flexible and cooperate with changing work requirements.

3.0 Capability expectations

3.1 Capability is an employee's capacity to apply appropriate knowledge and skills in order to achieve effective and efficient work standards and practices.

3.2 Employees should have a clear understanding of what is required of them to meet work standards and practices, with the first point of reference being their job description and person specification, although these documents should not be regarded as exhaustive.

3.3 Managers should give regular feedback on how well an employee is fulfilling the requirements for their post and it is recommended this is a minimum of an annual formal review.

3.4 For teachers, this will be the appraisal period and it is recommended there is a similar arrangement in place for support staff. Teachers and head teachers should be assessed against their relevant Professional Standards.

3.5 The head teacher or Governing Board (as appropriate) will need to consider whether certain teachers should also be assessed against other relevant sets of standards, published by the Secretary of State.

4.0 Capability concern

4.1 A capability concern is when expected work standards are not achieved or maintained. This could include when an employee:

4.1.1 does not make sufficient progress towards the objectives set in their appraisal review

4.1.2 does not meet the professional standards required for their teaching status

4.1.3 does not carry out the duties and responsibilities of the post to an acceptable standard

4.1.4 is unable to carry out their duties effectively due to long-term absence or frequent absences (unacceptable absence is dealt with under the school's attendance policy).

4.2 Capability differs from conduct, with conduct relating to an employee's behaviour not meeting the required standards.

5.0 Informal capability action

5.1 Informal action would normally be taken:

5.1.1 when the employee has a previous good work standard and the matter appears easily rectifiable and

5.1.2 when an observation (normally teachers) has taken place or other evidence has come to light, which indicates less-than-acceptable performance

5.2 Issues should be addressed using normal management processes (normally the appraisal process) in the first instance. These should not be left until the next planned meeting but addressed as soon as possible.

- 5.3 Informal action could include an informal action plan with planned support for the employee.

6.0 Formal capability action

- 6.1 Formal action should be taken when the employee has:
- 6.1.1 repeated occasions of poor performance or where matters have not improved following informal action
 - 6.1.2 performance concerns that are so serious they cannot reasonably be addressed through informal action
- 6.2 And may be taken when:
- 6.2.1 previous formal warnings are on file (for any reason) that are still current.
- 6.3 No formal action should commence against a trade union representative until the circumstances of the case have been discussed with the appropriate branch or full-time officer, with the prior permission of the employee. If the employee does not wish there to be any prior discussion with the branch or full-time officer then formal action will proceed in the normal way under this procedure.
- 6.4 Although there is an expectation that formal action is generally progressive, the first formal meeting can result in either a first or final warning, dependent on the severity of the situation and the circumstances.
- 6.5 At each level, a formal meeting will be arranged with the employee. There will be an outcome from the formal meeting which may include support, training and/or an action plan.
- 6.6 The employee has a right to be represented/supported during formal meetings under the capability policy, by a trade union representative or workplace colleague.
- 6.7 If the concern is established, the outcome should result in a warning and sanction (i.e. withholding an increment for support staff; preventing progression to the next pay point/grade for teachers) or ultimately dismissal.
- 6.8 The start date of the formal warning will commence when the related action plan and support programme is finalised. Therefore it is essential that the action plan is finalised at or within a few days of the meeting. If the outcome is that the concern was upheld and a warning was given, the warning should include:
- 6.8.1 the nature of the concern
 - 6.8.2 the required improvement
 - 6.8.3 support arrangements
 - 6.8.4 the monitoring arrangements and handling of the formal review stage (only applicable after a first written warning) including the review date
 - 6.8.5 what will happen if there is no, or insufficient, improvement and the formal action that could be taken as a result
 - 6.8.6 how long the warning will remain in force
 - 6.8.7 any effect on pay
 - 6.8.8 action plan
 - 6.8.9 details of how the employee can appeal

6.6 The levels of formal action and potential sanctions are given below:

Level	Potential level of sanction	Suggested period of review
One	First or final written warning. Withholding an increment for support staff or preventing progression to the next pay point/grade for teachers	Between four and ten weeks
Two – formal review meeting (this level only applies if a first written warning was issued at level one)	Final written warning Withholding an increment for support staff Preventing progression to the next pay point/grade for teachers	Between four and ten weeks
Three – decision meeting (will normally progress to this level after a final written warning has been issued at level one or two)	Dismissal	

6.7 Level one:

- 6.7.1 Where a first written warning is issued, if at any point during the monitoring/support period the evidence suggests a more serious issue, a decision may be taken to move to level two before the end of the review period.
- 6.7.2 A decision can be made to issue a final written warning at level one depending on the seriousness of the issue. This might occur where the employee's unacceptable performance has had, or is liable to have, a very serious or harmful impact on the organisation and/or pupils.
- 6.7.3 If improvement is not achieved at level one or sustained thereafter, then it is likely to result in progression to level two. Where a final written warning has been issued at level one it may progress to the level three decision meeting.
- 6.7.4 A decision to withhold any increment for support staff and a "no progression" decision for teachers can be made at this point for salary progression at the next salary review date.

6.8 Stage two:

- 6.8.1 This stage may result in a final written warning.
- 6.8.2 A decision to withhold any increment for support staff and a "no progression" decision for teachers can be made at this point for salary progression at the next salary review date.

6.9 Stage three:

- 6.9.1 This level may result in dismissal. Any notice will be in line with normal contractual arrangements or statutory notice depending on which is greater.
- 6.10 A written warning will remain live for the duration as set out in the outcome meeting, usually 12 months. If an employee appeals against an outcome, the sanction will remain in place until the outcome from the appeal is known.

7 Investigation

- 7.6 An investigation is the gathering of information relating to a capability issue which the manager will normally arrange. An investigation must be carried out before calling a formal meeting and will usually include a discussion with the employee about the issue.
- 7.7 Following the investigation, a decision will be made as to whether to drop the matter, provide informal support or, in cases which require action under the Capability Policy, to arrange a formal meeting.
- 7.8 All parties to the proceedings have an obligation to co-operate to ensure that processes and timescales are followed without delay.

8 Formal meeting

- 8.6 At the formal meeting, the manager will outline the concerns and the employee will have the opportunity to respond. Both parties may ask questions of each other or of others giving information. The chairperson/panel will adjourn the meeting, consider all the evidence that has been presented and reconvene the meeting to confirm the outcome.
- 8.7 The head teacher and/or a governor, or a panel of governors can conduct a formal meeting. The Governing Board may delegate responsibility for formal action including the decision to dismiss, to the head teacher. For the formal stages up to stage two, this may be delegated to an appropriate member of the leadership team e.g. business manager for support staff. Where the head teacher is the subject of the formal meeting, the Governing Board may delegate responsibility for formal action to a governor (normally the chair of governors) or a panel of governors.
- 8.8 Where practicable, different people should carry out the investigation and disciplinary hearing.
- 8.9 The manager should make it absolutely clear to the employee that formal action is being taken:
 - 8.9.1 At least five working days' notice will be given to the employee attending the formal capability meeting. For a formal meeting where dismissal is being considered, at least 10 working days' notice should be given.
 - 8.9.2 The notification will contain sufficient documentation about the performance concerns to enable the employee to prepare to answer the case at the formal meeting. The letter should include a copy of the Capability Policy, the right to representation and an additional copy of the relevant documentation for the representative.
 - 8.9.3 The letter must state the formal stage at which the meeting is being held and the possible outcome or sanction that may result.
 - 8.9.4 The employee will need to be advised that they must provide any documentation in sufficient time to allow papers to be distributed to all parties with time to read and understand the content. However, in circumstances where this is not possible the employee will need to contact their manager to make alternative arrangements.
 - 8.9.5 For a formal meeting where dismissal is being considered, the employee must ensure the school receives any documents at least five working days before the meeting to

ensure all parties receive the documentation at least three working days before the formal meeting to allow time to read and understand the content.

8.9.6 Any formal action taken and the reasons for the decision will be confirmed in writing to the employee, including details on how they can appeal. The employee should be informed of the consequences of failing to improve sufficiently within the set period following a final warning, including confirmation that it may result in dismissal.

8.10 It is good practice to make a note of performance reviews and informal meetings to inform future proceedings. Where a formal meeting takes place, minutes must be taken. Where dismissal is a potential outcome, minutes should be kept and consideration should be given to having note-taker present or using recording equipment. Employees are not permitted to make their own audio recording of a capability meeting.

9 Role of the governors

9.6 A panel of governors (normally 3) will hear an appeal.

9.7 Where collaborative arrangements with another Governing Board are in place regarding staff capability, governors from any of the collaborative schools may be delegated to conduct a formal meeting or appeal.

10 Role of GCC

10.6 In community schools a representative from GCC is entitled to attend and provide advice on all proceedings that may result in a school employee's dismissal. GCC will confirm any dismissal decision as required by regulation.

10.7 The Governing Board or, where formal action has been delegated, the head teacher, must consider any advice given by the GCC before a decision to dismiss is made.

11 Capability action plan

11.6 Action plans are developed to individual circumstances and will vary, but should normally include clear expectations regarding work standards and practices, the criteria for success, time scales, support, monitoring, and review arrangements which have been agreed.

11.7 Whilst it is for the manager to determine the criteria it is important that the employee understands what is required of them to achieve success and to help identify ways in which they can be supported. Any agreed support should form part of the action plan, including details of the person responsible for making any arrangements. Employees are expected to co-operate with the process and engage fully with any agreed support.

11.8 Should the employee not achieve a successful outcome following the action plan they would normally progress to the next level of the capability policy, and ultimately could be dismissed.

11.9 Arrangements for monitoring and review will be agreed as part of the action plan.

12 Absence during the procedure

12.6 If during the procedure the employee becomes absent, the head teacher is advised to contact their HR provider as soon as possible to ensure that the best course of action is followed.

- 12.7 Sickness absence should not normally delay any part of a capability process. If during the process the employee is signed off as medically unfit for work, the employee should be referred immediately for Occupational Health assessment (if available) including in the referral, details of the process and the stage reached in the procedure.
- 12.8 Where the employee is unable to attend capability related meetings for health reasons, written confirmation, together with a fit note must be submitted (the fit note must state specifically that the employee is unable to attend the capability hearing).
- 12.9 Where an employee is unable to attend and alternative times have been considered, the hearing will normally go ahead in their absence and they may submit a written statement and/or their representative may attend on their behalf.
- 12.10 Following any meeting taken in the employee's absence, the decision and the reasons for it should be communicated in writing, along with the right of appeal and any time-scales if appropriate.
- 12.11 If the employee is absent during the period of any formal warning being in force, the warning will be extended by a period equivalent to this absence from work. If there is an extension to the timescale of the warning, this must be confirmed in writing to the employee.

13 Dismissal

- 13.6 If an employee is dismissed the Governing Board will send an instruction to GCC and the dismissal notice will come from GCC.
- 13.7 Where dismissal is with notice, any notice period will be in accordance with the employee's contractual arrangements, or the statutory period, whichever is greater. The employee will receive normal pay throughout the period of notice.

14 Right of appeal

- 14.1 At all stages of the formal procedure, employees may exercise their right to appeal against a warning or decision to dismiss. Appeals consider the reasonableness of the original decision and are not a rehearing of the case. Determining reasonableness may include consideration of procedural irregularities or any relevant new evidence which could not have been available at the time of the formal meeting.
- 14.2 Employees who wish to challenge the outcome of a formal meeting have the right of appeal as specified in the warning or dismissal letter. Whilst the outcome of the appeal is pending, an action plan, warning or dismissal will remain in force.
- 14.3 The appeal letter must be received within five working days of the date of the outcome letter and clearly specify the grounds of the appeal including why and in what respects the decision of the original meeting was unreasonable. The appeal needs to contain sufficient clarity to enable the manager/governor(s) whose decision is being appealed (those who conducted the formal meeting) to know what they will need to respond to at the appeal hearing.
- 14.4 Any supporting documents or information should be provided with the appeal letter. The employer will collate, paginate and distribute the bundle for receipt by all parties at least three working days before the appeal meeting.

- 14.5 Where the appeal period overlaps with a pre-determined holiday period e.g. out of term-time for term-time only employees, the letter of appeal needs only to register the intention to appeal. However, a fully detailed letter should arrive within five working days following the end of the holiday period.
- 14.6 A committee of three governors not previously involved with the case will conduct appeal meetings. Where there has been an appeal at an earlier stage of the procedure, the same governors may conduct the present appeal.
- 14.7 Arrangements for the appeal meeting should normally be notified to the employee within 10 working days of receipt of the request for an appeal. The employee should be reminded of the right to be accompanied by a trade union representative or workplace colleague.
- 14.8 Appeals will be restricted to considering the reasonableness of the decision; they are not conducted as a full re-hearing.
- 14.9 At an appeal, the original outcome imposed will be reviewed and may be amended or withdrawn but it cannot be increased.
- 14.10 The decision of the appeal committee will be final and will be confirmed in writing to the individual together with the reasons for the decision. Should the outcome of the appeal change the original decision, the committee will need to make clear the terms of that decision.
- 14.11 If an appeal is successful at any of the stages, any outcome will be amended or withdrawn. In the case of dismissal, overturned on appeal, there will be no detriment to service.