



## King Edward VI School

# Capability Procedure

**December 2020**

<b>Version Number:</b>	Version 1
<b>Drawn up by:</b>	Suffolk County Council
<b>Reviewed by:</b>	Oliver Pryke - Governor
<b>Date reviewed:</b>	
<b>Approval by:</b>	Full Governing Body
<b>Date approved:</b>	December 2020
<b>Review Cycle:</b>	1 year
<b>Date of next Review:</b>	December 2021



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## 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 subject to full and meaningful consultation with the recognised Trades Unions. The policy will be reviewed as may be required by legislative or organisational change.

For specific advice and guidance, managers should refer to their named HR Consultant. There are template letters and additional guidance on the Schools' Choice website.

## 2. Scope

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

Where the concerns relate to the Headteacher, 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 Headteacher/line manager. A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

It also applies to teaching staff employed within Pupil Referral Units and local authority employed 'unattached teachers' and FE staff. This policy will specify where there are differences from schools-based staff, for example, in relation to the decision to dismiss and the route for any subsequent appeal against the decision.

The schools concerned are those Community and Controlled schools which have delegated budgets under S.45 of the School Standards and Framework Act 1998, or successor legislation. The Education (Modification of Enactments relating to Employment) Order 1999 provides for the governing bodies of schools concerned to be deemed the employer for the purpose of this policy.

The governing bodies of Voluntary Aided or Foundation Schools maintained by Suffolk County Council may also adopt this policy, with appropriate modification to reflect that in each case the governing body is the employer.

An employee working within a school but employed on another organisation's terms and conditions of employment should be managed under their appropriate policy/procedure.

### **3. Exclusions**

Disciplinary procedures exist to deal with misconduct, wilfully 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 Newly Qualified 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.

Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

### **4. Purpose**

While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place, for example, through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews.
- Identification and, where appropriate, assistance in resolving underlying problems

Many factors can contribute to poor performance, including those which are not directly related to the workplace. Assistance with resolving underlying issues could include reference to:

- The Wellbeing Service
- The SCC stress toolkit
- Referral to Occupational Health (where appropriate)

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. Additional training, coaching or advice may be agreed.

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 customers receive services of the highest standard

## **5. Application of the procedure**

### **5.1 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. Use of SMART principles may assist in objective setting, i.e.:

- **Specific** – they are well defined
- **Measurable** – both quantitatively and qualitatively
- **Achievable** – they are not set too high to make it impossible to achieve them
- **Resourced** – the resources necessary are readily available
- **Timed** – the timescales set are reasonable

The template letter PM2 should be used at this stage to set out expectations and inform the employee of the possible progression if insufficient improvement is made.

## **5.2 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. Where this is anticipated, advice must be obtained from the Schools' HR Consultant.

## **5.3 Progressing to the next stage of the procedure**

Before action under the formal stages of this procedure is considered, the employee should be informed in writing that this will be considered if there is no improvement within the agreed review period and invited to a meeting to discuss the evidence in more detail

In many circumstances, significant evidence will have already have been gathered as part of pupil progress monitoring, normal performance management and the additional support provided, which the school will simply collate and summarise as evidence.

The collated evidence will clearly indicate the support and advice offered to date and make a recommendation for one of the following:

- No further action,
- Further support as part of normal performance management
- Formal action under this procedure i.e. first written warning

In all cases, the outcome will be confirmed in writing to the employee.

Where the decision is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure.

All employees should progress through each stage of the procedure, and in accordance with agreed timescales.

Exceptions can apply in the following circumstances and consequently, line managers can decide to progress them to the next stage of the procedure earlier than agreed:

- 1) Deterioration in performance

2) Not meeting the targets in the agreed Development Plan.

## 6 Formal stage 1 – Meeting

### 6.1 Purpose

The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard against an agreed Development Plan (a template Development Plan is enclosed).

### 6.2 Procedure

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting, and will advise the employee of their right to be accompanied by their accredited Trades Union Representative, or a work colleague.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or the head teacher (or other senior school leader/the employee's line manager) for other employees. The meeting allows the employee 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.

**This is the start of the performance monitoring and review period.** Formal monitoring, evaluation, guidance and support will continue during this period. At the formal review meeting the following will be discussed:

- a) Confirm that the employee has the right to representation;
- b) Confirm that the meeting is being held under the school's capability procedure and explain the process that will be followed and the possible outcomes;
- c) Confirm the expected standard of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g. for teachers, which of the standards expected of teachers, or pupil progress targets, are not being met;
- d) Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it may be necessary for new information on performance to be disclosed);
- e) Confirm the risks to the school and pupils of the under-performance;
- f) Confirm the options available to support the employee in improving their performance (i.e. support, development, training, etc.);
- g) Ensure the employee is aware of what support is available to them e.g. the Employee Assistance Programme (EAP), Trades Union support, etc.;

On occasion, the manager may decide to adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

#### **At the meeting the manager and employee will discuss and agree:**

- a. The employee's current and expected levels of performance;

- b. The objectives for the Development Plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed;
- c. The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);
- d. When review meetings will be held;
- e. Write, agree and sign the Development Plan
- f. Any agreed reasonable adjustments to be made under the Equality Act 2010.

#### **At the end of the meeting the manager will:**

- a. Summarise the meeting;
- b. decide whether the employee should be issued with a formal written warning
- b. Ensure the employee understands what is expected of them and if the employee has been issued with a formal warning explain the process that will be followed and the possible next stages of the procedure, including the right of appeal against any sanction that may be imposed (any appeal must be lodged, in writing, within 14 days of the date of the letter issuing the sanction setting out the grounds of the appeal);
- c. Agree what support, development and reasonable adjustments (if appropriate) will be put in place

#### **After the meeting the manager will:**

- a. Confirm the outcome of the meeting in writing, including, if the outcome of the meeting was that a written warning should be issued, that a written warning has been issued;
- b. Ensure that the employee receives the support agreed in the Development Plan in a timely manner;
- c. Ensure that the agreed review meetings and any further review meetings deemed necessary take place;
- d. Continue to monitor the employee's progress against the Development Plan and progress the employee through the procedure as appropriate and in line with this procedure;
- e. Ensure that the employee is informed of any signs that they are not likely to achieve their targets at an early stage.

#### **After the meeting the employee will:**

- a. Make every effort to meet any objectives agreed in the Development Plan;
- b. Attend the agreed review meetings and any further review meetings deemed necessary;
- c. Give honest feedback on their current performance and progress against the Development Plan and pupil progress targets.

### **6.3 Formal Review Meeting**

The letter confirming the outcome of the first formal meeting and a copy of the Development Plan will be sent to the employee and, if a decision has been made that there should be a formal review period, will invite the employee to a formal review meeting at the end of the agreed review period (***this can be brought forward if necessary (see section 5.3)***). The employee has the right to be accompanied at any formal review meeting by their accredited Trade Union Representative, or a work colleague.

At any formal review meeting, the manager and employee will review the employee's progress against the Development Plan and the manager will confirm one of the outcomes stated below.



## **Possible Outcomes at the completion of a formal review period, should such a period have been deemed necessary**

If the manager decided that a formal review period was necessary the manager will confirm one of the following outcomes at the end of the formal review period:

### **1) The required standard of performance has been met**

The employee's performance will be managed under normal performance management arrangements and the employee will be informed that the required standard has been met.

### **2) The required standard of performance has not been met or significant progress has not been made towards meeting the required standards**

The employee will be progressed to Formal Stage 2 of the procedure (see section 7). Until the hearing takes place, the employee will continue to be supported to meet the requirements of the Development Plan.

The outcome of the formal review meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 2 of the procedure, the letter will include an invitation to a hearing.

## **Formal Stage 2**

Formal stage 2 will follow the same procedure and steps as formal stage 1.

The possible outcomes from formal stage 2 will be the same as formal stage 1 but if the required standards have not been met a final written warning will be issued to the employee in writing informing her/him that if the required standards have not been met at the end of a further review period then the matter will progress to formal stage 3 where a possible outcome is that the employee will be dismissed.

## **7 Formal stage 3 –**

As with the formal capability meetings and formal review meetings, at least five working days' notice will be given, and the notification will give details of the time and place of the meeting, and will advise the employee of their right to be accompanied.

### **7.1 Purpose**

The purpose of Formal Stage 3 is to determine:

- a. If the school has exhausted all options in supporting the employee to improve their performance;
- b. What the outcome of the procedure should be.

### **7.2 Procedure**

The procedure for the hearing will follow the procedure set out in Appendix 2.

The outcome of the hearing will be one of the following:

### **1) The required standard of performance has been met**

The employee is performing to the required standard and will be managed under normal performance management arrangements.

### **2) The required standard of performance has not been met but it has been determined that the required standard can be met within a short period**

A further review period (it is recommended this is no more than two working weeks from receipt of the Development Plan) and Development Plan will be implemented (under Formal Stage 2 of this procedure).

In these circumstances:

- a) The additional support to be given to the employee and the duration of the extended review period will be explained to the employee verbally at the meeting and a development plan detailing this will be forwarded to them with the letter confirming the outcome of the meeting
- b) A review meeting will take place at the end of the extended review period and one of the three outcomes set out within Section 7.2 will be determined.

### **3) The required standard of performance has not been met and the panel has determined that the required standard cannot be met within a short period**

If performance remains unsatisfactory, a decision, or recommendation to the Governing Body will be made that the employee should be dismissed or required to cease working at the school.<sup>1</sup> The employee is dismissed with notice. However, it may be agreed that the employee will not return to work at the school in a capacity which directly affects the education of pupils, or they may be granted paid leave for the duration of their notice period.

The outcome of the hearing will be confirmed to the employee in writing as soon as possible, and will include information about the employee's right of appeal. If a further review period has been granted (see outcome 2 above), the letter will include an invitation to the further review hearing.

## **8 Returning to earlier warnings**

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached.

## **9 Exceptional circumstances**

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<sup>1</sup> In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

In exceptional cases where the level of performance could have serious consequences successive warnings may not be appropriate. For example;

- where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or
- where a lack of competence has a seriously detrimental effect on the education of pupils and students; or
- where the employee's lack of competence could have other serious consequences, e.g. safety considerations

In such circumstances, the school may proceed directly to consideration of a final written warning or dismissal, as appropriate. Schools should seek advice from their Human Resources Advisor before taking such a decision.

## **10 Appeals**

Employees have the right to appeal against the first written warning, final written warning and any outcome of the Formal Stage 3 decision meeting. The procedure for any appeal will follow that set out in Appendix 2, "Procedure for a Hearing", except that the running order will be reversed.

If an employee feels that a decision to dismiss them, or other actions taken against them, is wrong or unjust, they may appeal in writing against the decisions within 14 days of the decision, setting out at the same time, the grounds for appeal.

## **11 Headteachers**

If there are concerns about the capability of the Headteacher, it might be inappropriate for him/her to carry out the roles normally assigned to the Headteacher in this procedure. This section sets out how these roles may be appropriately reassigned, within the spirit and intent of this procedure.

Concerns about the performance of a Headteacher may emerge from either the Governing Body (or management committee in the case of Pupil Referral Units) itself or from external sources such as Ofsted inspection or the Local Authority (LA) in its monitoring role.

The Chair of Governors may discuss concerns about the Headteacher's performance as part of the normal dialogue between the Headteacher and Chair of Governors. Such discussions will precede the informal stages detailed in this procedure.

The Chair of Governors may consult the LA or their Human Resources Advisor and arrange for help and support to be provided. Consultation with the Headteacher's trade union may also assist the process. However, if the matter is, or becomes, sufficiently serious (formal stage 2), the Headteacher should be advised that if the identified deficiency persists, it may be necessary to convene a committee of the Governing Body to consider the matter under the formal stages of this procedure. This possibility should be set out in writing.

A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

## **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 head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. Schools to say here how they might achieve this, for example, the head teacher 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 head teacher might also wish to be aware of any pay recommendations that have been made.

### **Consistency of Treatment and Fairness**

The governing body 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 head teacher.

### **Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers 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. 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. 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 head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

## **Retention**

The governing body and head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.