

Walter Infant School

CAPABILITY UNSATISFACTORY WORK PERFORMANCE

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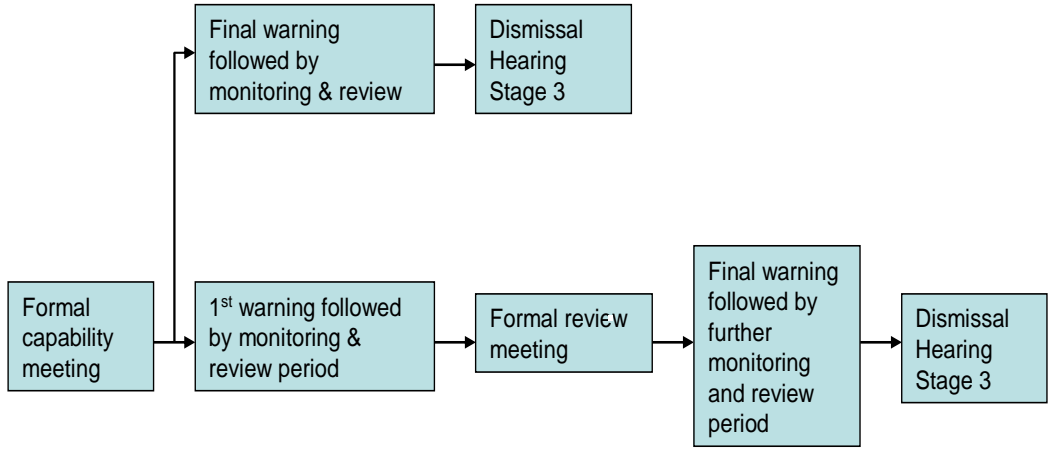
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Author: Nicky Barlow

Version	DATE	DESCRIPTION
1	September 2012	Replaces version 4 of the Capability Policy and Guidance – ill-health and unsatisfactory work performance
2	September 2015	Review completed – minor editorial changes
3	September 2016	Review completed – no changes made

List of Contents	Page No
Capability Procedure Flow Chart	4
1. Policy Statement	5
2. Purpose	5
3. Scope	5
4. Principles	5
5. Keeping Records	6
6. Capability Procedure	6
- Defining Work Performance/Capability Issues	6
- Roles and Expectations	6
- All Employees	6
- Managers/headteachers	6
- HR Consultant	7
- Trade Union/Staff Representatives or Work colleagues	7
- Trade Union Representatives	7
- Headteachers	7
- Non-Attendance of Employee	7
- Grievance	7
- Suspension	8
- Dismissal	8
- Timescales	9
7. Transition from Appraisal to capability Policy	9
8. The Formal Procedure	9
- Stage One – Formal Capability Hearing/First Written Warning	9
- When Dealing with Poor Performance - Target Setting	10
- Stage Two – Formal Capability Hearing/Final Written Warning	10
- Dismissal – Stage Three	11
- The Appeal	11
- Grounds of Appeal	12

Capability Flowchart



5 days notice
 +
 4 weeks minimum
 +
 4 weeks minimum
 =
 9 weeks

Note: The timings given above are illustrative only and are offered as minimum periods, which will be appropriate only in some cases. In other cases longer review periods may be appropriate. Schools will need to tailor the length of their monitoring and review periods to suit individual circumstances.

1. Policy Statement

- 1.1. Walter Infant School seeks to provide each employee with the guidance, development and support necessary to assure a productive and rewarding career. The School aims to provide its services in the most efficient and effective way possible. The School has an obligation to consider the effects of poor performance on the quality and provision of services, and on other employees.
- 1.1.1. This capability policy and procedure has been drawn up in consultation with Union/Staff representatives and schools. It takes into account the principles in the revised ACAS Code of Practice on disciplinary and grievance procedures and School Staffing Regulations 2009.

2. Purpose

- 2.1. This Policy deals with situations where an employee is unable to maintain a satisfactory level of **work performance**, but this is not a matter of misconduct. It does not deal with matters relating to health. These are dealt with in the managing sickness for school based staff policy.
- 2.1.1. It aims to provide a fair and consistent method for dealing with an employee who is not achieving a satisfactory level of work performance where informal advice and guidance through the appraisal process and in supervisory meetings has failed to achieve the desired improvement
- 2.1.2. It is the responsibility of managers/headteachers to set the standards for performance in line with any statutory requirements. The contribution of all employees in achieving high standards of work is a key factor in achieving the above aim.

3. Scope

- 3.1. The Capability Policy & Guidance applies to all employees of Xxx School, EXCEPT employees during their probation period (see the Policy and guidance for Probation) and newly qualified teachers in their induction period who have separate procedures.
- 3.1.1. Community, voluntary controlled community special and maintained nursery schools are strongly recommended to adopt this policy. Foundation and voluntary aided schools may also wish to adopt it.
- 3.1.2. Collaborating governing bodies working together under the Collaboration Regulations 2003 may apply this policy where appropriate.

4. Principles

- 4.1. The following important principles are incorporated into the Capability Policy:
 - ◆ This Policy aims to support an employee to maintain satisfactory levels of performance;

- ◆ This policy, based on established law, case law and best practice, has been through consultation with the Council, employee and trade union representatives;

Managers/headteachers have the right to meet with employees where they have concerns about performance. Employees have a right to know what is expected of them. It is expected that standards of work should be set and reviewed informally through the appraisal process, see the Appraisal Policy. If the appraiser is not satisfied with the progress the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the formal capability procedure.

- ◆ An employee may be accompanied at each formal stage by an employee/ recognised trade union representative or other staff representative of their choice.
- ◆ If the outcome of the capability hearing at stage three is dismissal, an employee has the right to appeal;

5. Keeping Records

Records must be kept of the following:

- ◆ Appraisal meetings and interim supervisory meetings
- ◆ Performance Plan – to monitor improvement.
- ◆ Records of /hearings within the Capability procedure
- ◆ Records of action will be disregarded for future capability purposes after 12 months. In exceptional circumstances, records may only be disregarded after 24 months.

6. Capability Procedure

6.1. Defining Work Performance/Capability Issues

6.1.1. A work performance/capability issue may arise when an employee is frequently or significantly failing to carry out their responsibilities or duties in a satisfactory manner. This may be due to a lack of professional knowledge, an inability to cope with reasonable workloads or not being able to meet identified standards. Alternatively it may be due to an inability to prioritise work, a lack of aptitude for the work itself, inadequate training or a difficulty in adapting to changes in the workplace (i.e. new processes/technology).

6.2. Roles & Expectations

- 6.2.1. **All Employees** - have a contractual responsibility to perform at a satisfactory level. Employees are therefore expected to be committed to achieving satisfactory levels of performance and to attend any meetings and hearings convened in accordance with the Capability Policy.
- 6.2.2. **Managers/headteachers** – are responsible for making sure employees are aware of school policies, practices and processes and for applying this policy in a fair and consistent manner. They are also responsible for ensuring employees are supported and assisted in achieving the required standards of performance and not asking their employees to take on unreasonable workloads. This responsibility

includes **carrying out induction, supervisory and appraisal meetings**, setting realistic and measurable standards, supporting employees in reaching them (via training and coaching etc), ensuring they are met and taking appropriate action within the procedures when they are not being met.

6.2.3. **HR Consultant** - the manager/headteacher of any capability case will inform their HR Consultant before they proceed to stage one of the formal procedure. A HR Consultant will normally be present at all formal Capability hearings and appeals.

6.2.4 **Trade union/staff representatives or work colleague** - may be requested by an employee to accompany him/her at each **formal** stage of the procedure.

6.3. Trade Union Representatives

6.3.1. Where the Capability procedure is to be applied to accredited Trade Union representatives (stewards), no formal action will be taken until the case has been discussed with a full time official of the recognised Trade union.

6.4. **Headteachers' Performance** - Where a headteacher's performance is causing concern the chair of governors will consult with the LA before initiating the procedure. As far as it is feasible the same process will be followed as for other staff.

6.5. Non Attendance of Employee

6.5.1. Requests for postponements or adjournments should not normally exceed 5 working days. If the absence seems to have been triggered by the commencement of the Capability procedure the case should immediately be referred to Occupational Health to assess whether the individual's health and fitness enables him/her to deal with the ongoing capability procedure.

6.5.2. If the employee is unable to attend a hearing due to illness or fails to take part in the Capability Procedure, the procedure may continue in the employee's absence. The employee must submit a medical certificate for the period of absence. Any written submission or representations made by the employee, or on their behalf, will be considered. At least two attempts will be made to arrange a hearing that the employee can attend. If the employee is still unable to attend, the hearing can proceed with a Union representative or work colleague of his/her choice. If the employee does not wish any other person to attend as his/her representative they must inform their manager/headteacher in writing and may make a written submission. The hearing can then proceed without the presence of the employee or representative.

6.6. **Grievance** - Where an employee raises a grievance during the capability process the process may be temporarily suspended in order to deal with the grievance. An example may be:

- A bias is alleged in the conduct of the capability hearing
- There is possible discrimination.

Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

6.7. Suspension

- 6.7.1. Exceptionally where due to poor performance there is a risk to the employee or children an employee **may** be suspended with full pay pending the outcome of a performance assessment. Suspension is not a penalty and must be a last resort. Managers should be aware of the likely impact suspension will have on the employee and must ensure that the period of suspension is as brief as possible. ***Managers/headteachers should first seek advice from their HR Consultant before suspending an employee.*** Where appropriate the manager must inform the employee's representative.
- 6.7.2. A meeting must be arranged to inform the employee that suspension is being considered, the reason for suspension and duration, this must be immediately confirmed in writing. The letter of suspension must be signed by the headteacher or his or her representative.
- 6.7.3. If suspension lasts longer than 4 weeks it should be reviewed thereafter at least on a fortnightly basis or as mutually agreed. The employee will be informed of the decision in writing after each review. A manager/headteacher from the school without any previous involvement will be nominated to maintain contact with the employee during the period of suspension.
- 6.7.4. The employee must make him or herself available for meetings/hearings during the procedure where their health permits. Where an employee cannot attend due to ill health their appointed representative may attend in their place or the employee may make a written submission. The employee must submit a medical certificate for the period of absence.
- 6.7.5. Employees must not take alternative employment while the contract of employment still applies
- 6.7.6. The manager/headteacher will need to manage communication at the individual's place of work carefully and sensitively when a member of the team is suspended *and before their return to work.*

6.8. Dismissal

- 6.8.1. The school will offer reasonable assistance to its employees to resolve issues of poor performance. However, it may not be reasonable or feasible, to sustain employment in all circumstances. Consequently unsatisfactory work performance may, after due consideration, lead to termination of employment.
- 6.8.2. At stage one the manager/headteacher would normally advise the employee that dismissal could result, if a satisfactory level of performance is not achieved.
- 6.8.3. If dismissed on capability grounds the employee must receive full contractual pay during the notice period, even when the entitlement to full sick pay might have expired. Termination of employment must be with contractual or statutory notice, whichever is the greater.

6.8.4. Where an employee has accrued annual leave, the employee may be paid in lieu of annual leave which has been accrued or where appropriate the employee may take their annual leave during their notice period.

6.9. Time Scales - As each case will be different it is not appropriate to set fixed timescales for each stage of the procedure. However, as a general guide a review period would normally be not less than 4 weeks. During this period monitoring of performance should be carried out at regular intervals.

6.9.1. A working day is defined as being Monday, Tuesday, Wednesday, Thursday or Friday during term time.

7. Transition to Capability Procedures

Concerns about performance will be raised initially through the Appraisal process – see the Appraisal Policy. If the appraiser is not satisfied with progress, the teacher will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure. They will be invited to a formal capability meeting in accordance with the school's Capability procedure.

8.1. Stage One –Formal Capability Hearing/First Written Warning

8.1.1. If support through the appraisal process does not bring about an improvement the manager/headteacher should inform the employee in writing that they will be taking formal action. The manager/headteacher will arrange a formal capability hearing with the employee or, if this is not possible, their representative. This must be confirmed in writing giving at least five working days notice from the date the letter was sent to the employee. The letter should include the following:

- ◆ That the hearing is being held in accordance with the Capability Policy & Procedure
- ◆ The nature and details of the unsatisfactory performance
- ◆ The date, time and location of the hearing
- ◆ The employee's right to be accompanied
- ◆ Identity of the person conducting the hearing and the Human Resources Consultant
- ◆ Any accompanying documents
- ◆ A copy of the Capability Policy & Procedure

8.1.2. At the hearing, the manager/headteacher will tell the employee in specific terms the standards expected and current shortfalls. For teachers the examples of which teacher standards are not being met will be identified. The employee and/or representative will have the opportunity to put forward their own views and explanation. Where it is found that the employee's performance is unsatisfactory the manager/headteacher will give the employee a written warning and a Performance Improvement Plan setting out:

- the performance problem
- the improvement that is required (Improvement Plan)
- the timescale for achieving this improvement
- a review date and
- any support, including any training or coaching that the employer will provide to assist the employee.

- that if performance does not improve, then the question of the employee's continued employment may be considered
- The employee's right of appeal.

The timescale for improvement will depend on the circumstances of the individual case, but would normally be between four and ten weeks.

A note relating to all formal warnings will be retained on the individual's personal file. Warnings will normally be disregarded for capability purposes after a period of 12 months (this may be extended to 24 months in exceptional circumstances).

8.1.3. The employee should be informed that the first written warning represents the first stage of the formal procedure and that failure to improve could lead to a final written warning and, ultimately, dismissal. In very serious cases, for example where the education of children is in jeopardy, this first warning could be a first and final written warning. In these cases failure to make satisfactory improvement during the review period will lead straight to a Dismissal hearing see paragraph 8.4. A copy of the Performance/ improvement plan should be kept and used as the basis for monitoring and reviewing performance over the specified period. The employee should also be referred to his or her right of appeal.

8.2. When Dealing with Poor Performance - Target Setting - Where targets for improvement are set they should be clearly defined in the Performance Plan. The aim is to help the employee achieve what is expected of him/her and to restore the individual's confidence in his or her own abilities with appropriate timescales. They should be revised as necessary and where possible agreed between the two parties. Targets should be SMART – Specific, Measurable, Attainable, Reasonable and Time-limited. This information should be recorded.

8.3. Stage Two – Formal Capability Hearing/Final Written Warning

8.3.1 If following the review period at stage one satisfactory performance has still not been maintained, the employee will be requested to attend a second formal capability hearing. This must be confirmed in writing, giving the employee at least five working days notice, from the date the letter was sent to the employee.

8.3.2 If at the end of the hearing there is a belief that capability action is appropriate the manager/headteacher will issue a final written warning. The employee must be informed that a failure to improve may result in dismissal. The employee should also be referred to his or her right of appeal.

8.3.3 At this stage, the employee and manager/headteacher will discuss why there is still a shortfall in the expected standards and where appropriate the performance plan should be amended to resolve the shortfall. The manager/headteachers should also discuss the timescale for achieving this improvement and the date for the next review meeting.

8.3.4 The employee will receive written notification of the outcome of this stage of the Capability Procedure, including the right of appeal.

8.4. Dismissal Hearing- Stage Three

- 8.4.1. Where performance is still below the expected standard following the review period at Stage 2, or Stage 1 in very serious cases, the employee will be requested to attend a dismissal hearing. This must be confirmed in writing giving the employee at least 5 working days notice of the hearing.
- 8.4.2 The purpose of the Dismissal Hearing will be to consider whether the employee's employment should be terminated where satisfactory performance has not been maintained .
- 8.4.3. The Hearing will either be chaired by the headteacher or a panel of governors. Governing bodies will need to determine their preferred approach to initial dismissal decisions and write these into their policy). DfE guidance accompanying the 2009 staffing regulations says that governors should delegate the responsibility for initial staff dismissal decisions to the headteacher. Appeals against the dismissal decision would then be heard by governors.
- 8.4.4. In practice it will not always be possible for the headteacher to take the decision, as their involvement throughout the procedure will have precluded the fairness of this. In these cases it would be appropriate for a panel of three governors to consider dismissal, with the case being presented by the headteacher. Any appeal would then be heard by a panel of three governors, previously not involved.
- 8.4.5 The employee (or representative) and the manager will have the opportunity to submit (via the clerk of the governors), 3 working days, in advance of the hearing any documentary evidence to be presented in the hearing.

8.5. The Appeal

- 8.5.1. An employee can appeal at any level of the formal stage of capability process i.e. Formal Written Warning, Final Written Warning or Dismissal where unfairness is alleged relating to how the hearing is conducted or there is possible discrimination against the employee. Appeals will be heard by a panel of three governors.
- 8.5.2 Appeals should be made in writing within 5 working days of receipt of the decision letter stating the grounds for appeal and should be addressed to the clerk to the governing body. The appeal panel will consider the reasonableness of the action to date or whether, in the case of a dismissal decision, a further defined period of monitoring should be provided.
- 8.5.3. The employee and management side must supply each other with any relevant documentation not less than three working days before the appeal date. New documents will not be admissible unless new information has come to light, which was not available at the original hearing.

8.6. Grounds of Appeal

8.6.1. The appeal hearing will not be a re-hearing of the whole capability case unless the person hearing the appeal concludes that the earlier proceedings were in some way fundamentally flawed. The grounds of appeal may constitute one or more of the following:

- The procedure – was the procedure followed and did any material failure affect the decision?
- The decision – the Headteacher or governors' panel did not come to the right conclusion because the evidence did not support a finding of incapability.
- The outcome – is the decision too harsh taking into account the nature of the incapability, the mitigating circumstances and/or the employee's previous service.