

Capability



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| STATUTORY / NON-STATUTORY | STATUTORY |
| MEMBER OF STAFF RESPONSIBLE | Headteacher |
| DATE APPROVED BY Head/SLT | September 2020 |
| GOVERNING BODY OR COMMITTEE RESPONSIBLE | GP |
| DATE OF FULL GOVERNING BODY APPROVAL | September 2020 |
| REVISION DUE DATE | September 2021 |

1. Purpose

This School expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. The School acknowledges that there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

This policy defines how the School will manage an employee if they are unable to perform to the required standards.

Further guidance is available in the How to Guide and this must also be referred to. Please note that the section numbering in the Capability policy and the How to Guide – Capability are not aligned.

2. Scope

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| This policy applies to: | Teachers including Leadership, Upper Pay Range, Main Pay Range and Unqualified Teachers Support Staff. |
| This policy does not apply to: | Volunteers Contractors Agency workers. |

This policy is non contractual and does not form part of any employee's terms and conditions.

Employees that have been subject to a TUPE into the School may be excluded from this policy where they have transferred under a contractual policy. In such cases, the employee should refer to their own contractual policies and procedures.

Employees with less than two years service may be subject to a shortened procedure.

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The School expects all parties to maintain confidentiality throughout the application of the policy.

3. Performance management

Performance management The School will manage an employee's day to day performance with the Performance Management Policy.

Annual review of performance Every employee will have an annual review of their performance. The review process enables an employee's performance to be monitored and assessed.

Pay progression If an employee is unable to perform to the required standards of the role, this may have an impact on their annual pay progression.

4. Managing capability

Considerations The manager must consider whether to start the capability process if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent.

There may be exceptional circumstances when the manager and/ or employee anticipate a long term capability concern. This may happen due to the employee's health or a disability. In these circumstances, it is anticipated it is unlikely that the employee can achieve the required level of performance. Consideration must be given to whether reasonable adjustments are appropriate. The line manager must seek advice from Education Personnel Services in such cases.

Policy stages and principles The possible stages are:
informal stage
formal stage one
formal stage two
formal stage three - may result in dismissal
appeal after each formal stage.

There is a shortened procedure for employees with less than two

years service as detailed in [Appendix One](#).

As a general principle the manager will seek to use the informal stage prior to progressing to the formal stages.

In exceptional circumstances, it may be appropriate to start at the formal stage without using the informal stage. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

4. Informal stage

Reference must be made to the How to Guide - Capability for the full procedural information.

Informal stage The manager should speak to the employee by having an informal discussion known as a managerial support discussion. Depending on the circumstances, this could become a series of informal discussions.

Right of representation The employee is not usually accompanied at any discussions within the informal stage of the policy. There may be circumstances when the employee asks to be accompanied and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

Outcome(s) of informal stage The manager undertaking the managerial support discussion(s) must decide on the outcome.

A record must be made of each discussion. The manager must share the record with the employee. A copy must be kept on the employee's personnel file.

5. Formal stage

Reference must be made to the How to Guide - Capability for the full procedural information.

Formal stage At each formal stage of the policy, the employee must be invited to attend a meeting/ hearing.

Meetings/ hearing The employee must receive in writing the invitation to the meeting/ hearing.

arrangements

The letter must give the employee **5 working days'** notice of the meeting/ hearing.

Formal record of the meeting/ hearing

A formal record must be taken during the meeting/ hearing. This may be made by audio recording the meeting/ hearing or by a note taker. It is the School's responsibility to make the appropriate arrangements.

If an audio recording takes place, a copy of the recording must be retained by the School. The School must comply with all relevant retention and storage requirements.

For governor hearings in maintained schools, there remains a legal requirement to have a written record of the meeting of the Governor Committee.

Alternative date

The School expects that the employee and their representative will make all reasonable efforts to attend the first scheduled meeting/ hearing date and time.

If it is not possible, the employee may propose an alternative date and/ or time. This should be within **5 working days** of the original meeting/ hearing.

The meeting/ hearing will be rescheduled.

Sharing of information

The manager and employee are required to exchange all relevant papers and supporting evidence in advance of the meeting/ hearing. Management documents will be supplied with the invitation letter.

The employee or their representative must submit all relevant papers and supporting evidence to arrive with the chair at least **3 working days** before a meeting/ hearing.

Right of representation

The employee has the right to be represented/ accompanied at a formal stage meeting/ hearing or appeal meeting. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

Attending formal meetings/ hearings If the employee is not well enough to attend the meeting/ hearing, it may be deferred until they are able to attend. A meeting/ hearing will not be deferred indefinitely because the employee is unable to attend.

Outcome of a formal meeting/ hearing The chair of the formal stage meeting/ hearing must fully consider all evidence presented and decide on an outcome.

A written warning may be issued and this can be:
a first written warning of 12 months OR

a final written warning of between 12 – 24 months

For employees with less than two years service - a final written warning of between 12 – 24 months.

At a stage three hearing the employee may be dismissed on the grounds of performance capability.

The chair must confirm the outcome in writing within **5 working days** of the meeting/ hearing. A copy of the outcome letter and any warning must be placed on the employee's personnel file.

If the outcome is dismissal, any sums owing to the School from the employee will normally be deducted from their final pay.

Review meetings Following the formal stage meeting/ hearing the manager must hold scheduled review meetings with the employee.

Progression through the formal stages The manager can progress to the next formal stage and re-enter the formal stage at the appropriate point if:

- the employee's performance does not meet the standard required
- there is a further performance concern even though this may be different to a performance concern(s) referred to in a previous stage
- if an improvement is not sustained for a 12 month period following a formal stage one meeting
- if an improvement is not sustained for a 12 - 24 month period following a formal stage two meeting
- the employee has not been successfully redeployed and/ or has refused a reasonable offer of alternative employment.

6. Appeal stage

Reference must be made to the How to Guide - Capability for the full procedural information.

Appeal stage The employee has the right to appeal against the outcome of a formal

meeting/ hearing.

Right of appeal The employee must submit their appeal in writing within **10 working days** following receipt of the written outcome of the formal meeting/ hearing. This must include the full reasons for the appeal.

Following an appeal of a formal stage three hearing, there is no further right of internal appeal.

Appeal meeting The employee must be invited to attend a meeting. The employee must be given **7 working days** notice of the meeting.

Meeting arrangements The principles of [meeting arrangements](#) will apply.

Formal record of the meeting The principles of the [formal record of the meeting/ hearing](#) will apply.

Alternative date The principles of [alternative date](#) will apply.

Sharing of information The principles of [sharing of information](#) will apply.

Right of representation The principles of the formal stage [right of representation](#) will apply.

Outcome of the appeal meeting The chair must fully consider all evidence presented and decide on an outcome.

The outcome cannot impose a higher sanction than issued at the formal meeting/ hearing.

The chair must advise the employee of the outcome at the appeal meeting unless otherwise agreed. The outcome must be confirmed in writing within **5 working days** of the meeting.

A copy of the outcome letter must be placed on the employee's personnel file.

7. Gross Incompetence

Reference must be made to the How to Guide – Capability for the full procedural information.

Definition **Gross incompetence** - occurs where an investigation identifies that an employee has failed, either by a single error

or series of errors, to perform the duties of their role. The outcome is that this causes or has caused serious harm or puts others (colleagues, general public or service users) or the School's reputation and performance at serious risk.

Gross incompetence only applies in exceptional circumstances. The manager must seek advice from Education Personnel Services in such cases.

Policy stages

The possible stages are:
formal stage three hearing - may result in dismissal appeal.

Suspension or alternative arrangements

Before making a decision about suspension or alternative arrangements, the appropriate manager must seek advice from Education Personnel Services.

Suspension or alternative arrangements are neutral and precautionary acts. They may be considered at any point during this policy once it is established that the circumstances may be gross incompetence.

The appropriate governance arrangements must be adhered to in deciding whether suspension or alternative arrangements are appropriate.

During suspension or alternative arrangements the employee must adhere to all relevant requirements.

Written confirmation of the decision regarding suspension must be provided to the employee.

Suspension or alternative arrangements must be regularly reviewed.

There is no right of appeal against the decision to apply alternative arrangements or suspension.

Formal stage 3 hearing

The principles of the [formal stage meeting/ hearing](#) will apply.

Hearing arrangements

The principles of [meeting/ hearing arrangements](#) will apply.

Formal record of the hearing

The principles of the [formal record of the meeting/ hearing](#) will apply.

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| Sharing of information | The principles of sharing of information will apply. |
| Alternative date | The principles of alternative date will apply. |
| Right of representation | The principles of the formal stage right of representation will apply. |
| Attending a formal stage 3 hearing | The principles of attending formal meetings/ hearing will apply. |
| Outcome of the formal stage 3 hearing | The principles of outcome of the formal meeting/ hearing will apply. |
| Appeal | The principles of the appeal stage will apply. |

8. Other Policy Requirements

Reference must be made to the How to Guide – Capability for further information relating to this section.

Confidentiality It is expected that all parties involved in the capability process will maintain confidentiality as appropriate. This is both within and outside of the School (including social media).

If any party does not maintain confidentiality action may be taken under the Disciplinary policy.

Right of Representation Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure..

The employee is not usually accompanied at any discussions within the informal stage of the policy. There may be circumstances when the employee asks to be accompanied and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

The employee has the right to be represented/ accompanied at a formal stage meeting/ hearing or appeal meeting. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:
 arrange their own representative
 liaise with their representative to agree the formal

meeting/ hearing or appeal meeting date and time
advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

Referral to Occupational Health/ medical practitioner

It may be necessary to refer the employee to Occupational Health/ medical practitioner to obtain medical advice and information.

If an employee does not co-operate with the referral, any assessment or decision taken will be based on the information available.

Redeployment

Redeployment can be considered at any stage in this policy and:
must not be used as a sanction
should result in satisfactory performance in the new role
is subject to a suitable opportunity being available.

Requirement for the School to pass on information about a teacher's capability to a new employer

A Headteacher or teacher may apply for a job with an alternative employer. The employee may have been subject to the formal stages of the Capability policy within two years prior to starting a job with a new employer. In such cases, the School must notify the new employer.

Safeguarding concern (relating to vulnerable adults, children and young people)

The School may take action under the Capability policy for reasons that relate to a safeguarding concern. Such cases must be dealt with in accordance with Hampshire's Child Protection procedures. This ensures that a child, young person or vulnerable adult is not at risk or that a police or social care investigation is prejudiced.

Advice must be sought from Education Personnel Services.

Referral to relevant bodies

In the following circumstances it may be necessary to make a referral to the relevant body:
if a dismissal takes place
in circumstances where a formal process regarding a capability concern has not concluded and the potential outcome may have resulted in dismissal.

Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that a referral has taken place.

For further guidance please contact Education Personnel

Services.

Mutual agreement As an alternative to a formal stage meeting/ hearing, the School and the employee may discuss a mutual agreement. The contract of employment may be ended by mutual agreement between the employee and the School.

There is no right to appeal a mutual agreement as it is entered into with the consent of both parties.

Fast track procedure In very serious cases, a final warning may be issued at a formal stage one meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the manager can proceed to a formal stage three hearing.

Further advice must be sought from Education Personnel Services.

Formal action – professional association/ trade union representative Where there are concerns involving a professional association/ trade union representative, must notify and seek advice from Education Personnel Services before taking formal action.

9. Appendix One - Managing Capability for employees with less than two years service

Reference must be made to the How to Guide – Capability for further information relating to this section.

Managing Capability

Policy stages The possible stages are:
informal stage
formal stage – may result in dismissal
appeal only against a dismissal.

As a general principle the manager will seek to use the informal stage prior to progressing to the formal stages.

In exceptional circumstances, it may be appropriate to start at the formal stage without using the informal stage. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to

achieve the required improvement before moving to the next stage of the policy.

Informal stage The principles of the [informal stage](#) will apply.

Formal stage The principles of the [formal stage](#) will apply.

Appeal stage The principles of the [appeal](#) section will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

Gross Incompetence

Gross incompetence The principles of [gross incompetence](#) will apply.

10. Policy Governance

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