

West Park

'A caring school where we put pupils and their achievement first'



Capability Policy

Reviewed November 2022

Capability Procedure

This procedure applies to all staff about whose performance has raised concern. This includes the Headteacher, teachers and all other staff.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the individual 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 individual of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Support Period

Concerns about performance will be raised through the Appraisal and where necessary a support period will be initiated prior to any formal action under this procedure.

Where concerns are raised during the appraisal the Headteacher/Senior member of the Leadership Team will convene a meeting with the employee.

An employee would not normally be accompanied at this meeting. At the meeting the Headteacher/Senior member of the Leadership Team will: a) Outline the specific performance shortcomings, b) Explore the reasons for underperformance (is it work or non-work related?), c) Explain the standards expected, d) Agree the performance standards required (Performance Improvement Plan) and the timeframe (the 'Informal Review Period') in writing, e) Decide on the support that is required and to ensure that it is targeted/appropriate to the individual's needs. f) Ensure SMART targets are set.

The employee must be supported for a period of time which is reasonable considering the role and the nature of the shortcoming(s). Where possible an agreement will be sort for the length of period required for each individual case. This would normally be between 6 and 8 weeks, however where there are serious capability concerns the Headteacher will have the discretion to use shorter timescales.

There will be interim review meetings to assess progress against the employees Performance Improvement Plan. These will take place at regular intervals during the Informal Review Period.

A date must also be set for a meeting to review progress at the end of the Support Period. Depending on progress, this meeting will serve one of two purposes: a) Where the employee's performance improves to the standard required the employee should be informed of this and also reminded of the need to maintain the improved standard. b) If the employee's performance does not reach the standard required this meeting will inform the employee that the process is moving to the Formal Process under the school's capability procedure. A letter should be issued to the employee inviting them to a Formal Capability meeting to take place 5 working days after the date of the review meeting.

It is important that the employee is made aware of the consequences of the failure to improve and if performance remains unsatisfactory at the end of the Support Period then the Formal Process will be commenced, which could result in the issue of a First Written Warning.

The outcome of the Support Period including the various review dates will be confirmed in writing within 5 working days. A copy of this letter should be held on the employees personnel file.

Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or head teacher or senior staff (for other teachers and other staff). The meeting allows the individual, accompanied by a companion if they wish, 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.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings
- give clear guidance on the improved standard of performance needed to ensure that the individual can be removed from formal capability procedures
- explain any support that will be available to help the individual improve their performance;
- 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 in straightforward cases could be between four and ten weeks, and
- warn the individual formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the individual will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal review meeting

As with formal capability 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 individual of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the person conducting the meeting is satisfied that the individual has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the individual will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The individual will be invited to a decision meeting.

Decision meeting

As with 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 individual of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the individual should be dismissed and the individual shall be advised of this in advance of the meeting.

The individual will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Dismissal

Once the decision to dismiss has been taken, the Head or a member of the Senior Team will dismiss the individual with or without notice.

Appeal

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

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the individual.

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

The individual will be informed in writing of the results of the appeal hearing as soon as possible.

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

Part of the policy 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 individual and governing body to quality-assure the operation and effectiveness of the appraisal system.

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.

Definitions

Unless indicated otherwise, all references to “individual” include the head teacher, teacher or any member of staff.

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 and will be *(eg referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures)*. 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 individual will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

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