

Smithills School



Managing Capability Procedure

Policy Document

May 2011

Written By: Local Authority

Signed:  **Headteacher**

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Approved on behalf of Governing Body:

Ann Hardman – Chair of Personnel

Date: 26th May 2011

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MANAGING CAPABILITY PROCEDURE

1. THE ISSUE

- 1.1 The School is committed to providing teaching and learning efficiently, effectively and economically to its children/young people. Equally, the School wishes to preserve its reputation as a fair and equitable employer who provides good working conditions where the highest standards of teaching and learning can be achieved and maintained. The School is mindful of its responsibility to balance the needs of the individual employee with the requirement to deliver high standards of teaching and learning to its children/young people.
- 1.2 The School recognises that there are occasions where an employee's performance, for whatever reason, fails to meet the standard required. This policy and the associated procedures for handling such issues is designed to provide the employee with the opportunity to understand how and why their performance does not meet the needs of the school and its children/young people, and to encourage the employee to improve their performance.
- 1.3 The procedure is not intended to exclude other measures, e.g. training and development, which may be considered appropriate for the purpose of encouraging an employee to improve his/her performance, but it represents a standard approach which provides the employee with opportunities to hear how and why his/her performance is considered unsatisfactory and to offer any explanation about this which he/she wishes to put forward and the opportunity to remedy the situation with appropriate support.
- 1.4 The overall objective of the procedure is to provide a framework around which an employee's performance can be improved so that it meets the standards required.

2. APPLICATION/SCOPE OF PROCEDURE

- 2.1 This procedure is designed to deal with unsatisfactory standards of performance by an employee that it is believed may be due to a lack of the necessary ability, aptitude, knowledge or skills required to do the job.
- 2.2 It does not deal with sickness absence. It is acknowledged, however, that health problems, particularly those that are stress related, may be identified in the course of the procedure.

In such cases the Managing Sickness Absence Procedure and Workplace Stress Policy should be used and the advice of the HR Officer and/or Occupational Health Unit will be sought to try to find the most appropriate individual solution.

- 2.3 Similarly, matters of misconduct do not fall within the scope of this document and should be dealt with under the Disciplinary Procedure. In this respect attitudinal difficulties relate more to conduct and if it should emerge that performance problems are related more to attitude than skills, knowledge, aptitude or health, the matter should be dealt with through the Disciplinary Procedure.

2.4 It should also be noted that this procedure does not apply to-

- Termination of a fixed term Contract of Employment where the term of that contract expires without being renewed.
- Termination of a temporary appointment where the reason for termination is that the requirement for the employee's service has ceased or diminished, or is expected to cease or diminish.
- Termination during or at the end of a probationary period of service, whether or not extended beyond its originally specified duration.
- Termination of employment by reason of redundancy, whether or not competence and performance are criteria taken into account when selecting for redundancy.
- Resignation by the employee, or other termination by mutual consent.
- Inadequate performance believed to be attributable to a wilful refusal to work satisfactorily, which is liable to be regarded as a matter for action under the Disciplinary Procedure.

3. GUIDING PRINCIPLES

3.1 This procedure was drawn up having regard to the following guiding principles:

- To encourage a sensitive and constructive approach to capability issues by employees, Head Teachers and Governors.
- To ensure capability issues are dealt with effectively and with clear outcomes at all stages.
- To involve and recognise the value of the role of the Trade Unions in the operation of this procedure.
- To ensure standards of work required are explained so that employees are clear as to what is expected of them.
- To try to find solutions to overcome difficulties whilst protecting the shared interests of everyone concerned to sustain standards and quality in teaching and learning to children/young people.
- To recognise that whilst all reasonable efforts will be made to help improve and retain an individual employee with a capability problem, the School cannot guarantee to maintain employment.

4. AIM OF THE PROCEDURE

- 4.1 The aim of the procedure is to ensure that employees can meet the basic requirements of the job and perform to the standards expected. This involves making clear what is expected, setting clear identifiable targets, monitoring performance, and providing appropriate training support to achieve the standards. Where, despite this support, an employee is still unable to meet the standards required then it may be necessary to terminate their employment.
- 4.2 The procedure is staged to provide a framework for Head Teachers, Governors and employees to resolve performance difficulties but that does not mean that each stage must apply regardless of the severity of the performance shortfall. There may be exceptional cases where the capability problem strikes at the heart of the contract and termination of employment may be the only option if suitable alternative work is not available. There may also be occasions when it becomes clear that the issue is one of conduct rather than capability which would warrant the matter being dealt with under the School's formal Disciplinary Procedure.

5. STAGES OF THE PROCEDURE

Head Teachers/Governors should, before entering into the stages of the procedure, ensure that HR Children's Services are aware of the situation.

When meeting formally with the employee, the Head Teacher should normally be accompanied, this may be a representative from HR Children's Services or a colleague, in order to ensure a record of the meeting and the outcome is made.

The Head Teacher should endeavor to ensure the employee is accompanied at any meeting, either by their Trade Union Representative, or by a friend or colleague. This person should be employed by the Authority.

Part 1 – Informal Stage of the Procedure

- 5.1 If a Head Teacher is concerned about an employee's standard of performance, the following process should be followed:-
- 5.2 Wherever possible, it is important to draw the employee's attention to issues as they arise but if this does not appear to be resolving the problem and/or the matter is more complex, then an initial investigation and appraisal of the employee's performance should be undertaken, so that the issue(s) can be clearly identified.
- 5.3 The Head Teacher should then undertake an informal counselling interview with the employee, highlighting areas where performance is not considered to be satisfactory and give clear specific examples of problem areas and identify where improvements are required. Suggestions should be made as to ways in which improvement can be achieved. The Head Teacher should listen to any explanation or statements made and be prepared to adjourn the meeting, if necessary, to investigate any points raised by the employee.

- 5.4 It should be made clear to the employee that informal counselling about capability problems is an attempt to understand the reason for and hopefully solve such problems.
- 5.5 It is important that the informal counselling encourages the employee to explain anything that may be affecting their performance, e.g. domestic problems, health issues, resource imbalance. If the source of the problem relates to a health issue then, if appropriate, the employee should be referred to the Occupational Health Unit and medical advice sought.
- 5.6 At the end of the meeting the Head Teacher should confirm with the employee what has been discussed and agreed. The Head Teacher should ensure that he/she has clearly explained the standard of performance required the training and/or other support to be made available and confirmed that performance will be monitored over a specified period.

It is important that accurate notes are kept of the discussion and that the employee is made aware that failure to improve performance could result in the matter being dealt with on a formal basis.

Part 2 – Stage 1 of the Formal Procedure

- 5.8 If the problem remains, or is of a more serious nature, the Head Teacher should move to the formal stage of the procedure.

Timescales

- 5.9 Normally, the period given for improvement will be no more than six months after the date of entry into the Formal Procedure (in exceptional circumstances this period could be extended). The frequency of review meetings during this period will depend on the circumstances of each case. In extreme cases where poor performance is likely to present a risk to the School, staff or children/young people, then the period given for improvement in performance after the date of a formal warning will be no more than 4 weeks.
- 5.10 The employee should normally be given notice, of at least 48 hours, of a meeting with the Head Teacher and be advised of their right to be represented. The Head Teacher should write to the employee and state the issues he/she is going to discuss at the meeting.
- 5.11 The Head Teacher should begin the meeting by outlining the problem as he/she sees it, remind the employee of the standards required and seek to confirm with the employee's agreement that there is a shortfall in performance.
- 5.12 The Head Teacher must listen to any reasons given or statements made by the employee and be prepared to adjourn the meeting, if necessary, to investigate any points raised. It is important that the employee is given the opportunity to explain anything that may be affecting their performance.

5.13 At the end of the meeting, the Head Teacher should:

- Confirm their decision in writing to the employee and any action points made.
- Set up a **performance improvement plan** with the employee with a timetable for improvement. It is important that the Head Teacher monitors performance against the improvement plan on a regular basis in order to:
 - provide support and guidance to the employee, hopefully to assist them to improve their performance;
 - to be aware of/and document problem areas for further discussion.
- Should an opinion be needed from the Occupational Health Unit, the Head Teacher should also refer to this in the letter to the employee. It is important that the Occupational Health Unit is provided with a thorough and accurate account of the problem.
- **Issue a formal warning to the employee** that their performance is below standard and advise them that failure to improve their performance could ultimately lead to dismissal should they continue to fail to meet the standard required.
- The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to the Governor Appeals Committee. The employee has the right to be represented by their Trade Union or accompanied by a friend.

Part 2 – Stage 2 of the Formal Procedure

5.14 If the employee's performance continues to remain below standard, or is seriously below the standard required, the employee should be advised, normally with at least 48 hours notice that a meeting is to be held to discuss their performance. The issues to be addressed should be outlined and the employee advised of their right to be represented (as in 5. 10).

5.15 The Head Teacher should state the problem to the employee and remind them of what is required. The Head Teacher will need to listen to what the employee has to say (as in 5.5, it is important that due account is taken of any medical information which the employee has provided and a referral made to the Occupational Health Unit, if appropriate). The Head Teacher should be prepared to adjourn the meeting, if necessary, to investigate any points raised by the employee.

5.16 At the end of the meeting the Head Teacher will need to:

- Confirm the discussion and action points;
- Set up a **final performance improvement programme** with the employee, with a timetable set for improvement as outlined in 5.13(b);
- **Issue a final warning** to the employee explaining what will happen if they continue to fail to meet the standard required.
- The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to the Governor Appeals Committee of the school. The employee has the right to be represented by their Trades Union or accompanied by a friend.

5.17 Where at the completion of the final period allowed for improvement there has not been acceptable progress, the Head Teacher will confirm the intention to convene a Formal Capability Hearing.

Part 2 – Stage 3 of the Formal Procedure

5.18 The employee will be advised in writing of arrangements for a **Formal Capability Hearing** and at least 10 working days notice will be provided. The notification will include the purpose of the meeting, copies of any written evidence to be submitted, relevant documents to be referred to, and details of any witnesses to be called. The employee will be advised of the right to be accompanied by his/her Union Representative/colleague.

The Panel for the hearing will consist of:

- 3 Governors
- *(one of whom will be the Chair or Vice Chair of Governors and will chair the hearing)*
- *An Officer from HR Children's services (to ensure the process is followed and to record the meeting)*

The hearing to be conducted in accordance with procedure outlined in Appendix 1.

5.21 The Panel considering a capability issue will need to consider:

- An outline of the employee's job/role within the School, including their date of commencement, job description, their application form and training record.
- The performance standards required of the postholder.
- Reasons why the standards are achievable.

- The reasons for setting the standards.
- Where the employee falls short of performance (*with evidence where appropriate*).
- Steps that the Head Teacher has taken to improve the employee's performance including dates and times of meetings with copies of letters sent and your notes of meetings held.
- The Head Teacher's response to any explanations or statements of the employee.

5.22 The Panel may determine either that:

- No further action be taken.
- There be a further opportunity to improve performance, together with any specific recommendations.
- An alternative post be offered which may be at a lower level of responsibility and grade/salary.
- Contract of Employment be terminated with the required period of notice.

5.23 The employee will be advised of the **right of appeal** against the decision and the decision will be conveyed in writing within five working days.

5.24 Any appeal must be registered in writing to School Governor Appeals Committee within ten working days of receipt of the letter confirming the outcome.

5.25 **The Appeal Hearing** will be conducted in accordance with Appendix I and the decision of the Panel will be final.

CONDUCT OF CAPABILITY HEARINGS AND APPEALS UNDER THE CAPABILITY PROCEDURE

GOVERNOR PANEL

The Panel for the hearing or appeal hearing will comprise three Governors (one of whom will act as Chairman for the purpose of controlling the proceedings). A representative of HR Children's Services will act as adviser to the Governor Panel. The employee may be accompanied by a Children's Services employee, Trade Union Representative or may choose to represent themselves.

CONDUCT OF HEARINGS

- The Chairman of the Panel will introduce those present and explain the purpose of the hearing, also the procedure to be followed. The procedure will allow for short adjournment should either party wish a brief period for deliberation during proceedings.
- The Head Teacher will present a statement of the case regarding the reasons for the employee being unable to achieve satisfactory levels of performance. Documentary evidence may be referred to and witnesses called.
- The employee/representative will have the opportunity to question the Head Teacher and witnesses.
- The Panel will have the opportunity to question the Head Teacher and witnesses.
- Each witness will leave the proceedings after questioning.
- The employee/representative will present a statement of case and may call witnesses in support.
- The Head Teacher will have the opportunity to question the employee and witnesses.
- The Panel will have the opportunity to question the employee and witnesses.
- Each witness will leave the proceedings after questioning.
- The Head Teacher will summarise the case introducing no new evidence.

- The employee/representative will summarise the case, introducing no new evidence.
- The Head Teacher and employee will leave the proceedings whilst the Panel considers its decision and recommendations. Should the Panel wish to ask further questions both parties will return notwithstanding that the Panel may only wish to ask questions of one of the parties.
- On reaching a decision, the Chair will recall the parties and advise them of the outcome.
- The employee will be advised of the outcome in writing.

_____ School

PERFORMANCE IMPROVEMENT PLAN (PIP)

**To be used by the Head Teacher and Employee as part of the
Managing Capability Procedure
as a Signed Record**

- *Informal Counselling
- *Formal PIP
- *Final PIP
- *(Delete as appropriate)*

<p>Name of Head Teacher Conducting Interview:.....</p> <p>Department:</p> <p>Accompanied by</p> <p>Name of Employee Being Interviewed:</p> <p>Department:</p> <p>Section:</p> <p>Accompanied By:</p> <p>Date of Interview:</p> <p>Dates of Any Previous Discussion(s) Regarding Performance:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(Please attach any supporting documentation)</p>

SPECIFIC WORK ISSUES WHICH REQUIRE DISCUSSION BETWEEN HEAD TEACHER AND EMPLOYEE

Areas of Concern			
Standards Required			
Agreed Action To Meet Requirements			
Timescale for Improvements			
Support Required			

Any other information which should be taken into account regarding employees performance - Employee's Comments:

.....
.....
.....
.....

Are there any warnings to be given?
FORMAL/FINAL

Date of Next Meeting:

Signed By Employee:

Date:

Signed By Head Teacher:.....

Date:

To be completed by Head Teacher

Reason for issuing Formal Warning:

.....
.....
.....

cc Employee
Personal File
Trade Union Representative

APPENDIX 3

INVITATION TO ATTEND COUNSELLING SESSION

Date:

Ref:

Name

Address

Dear

MANAGING CAPABILITY – INFORMAL STAGE

In accordance with the Managing Capability Procedure a meeting has been arranged for *(date, time and place)* to discuss *(Be specific about the problem eg failing to meet payroll deadlines)*.

You are entitled to be accompanied by a Trade Union representative or a colleague if you wish.

Please acknowledge receipt of this letter by signing the attached copy.

Yours sincerely

.....
(Head Teacher)

I acknowledge receipt of an exact copy of this letter.

Signature:..... Date:.....

FORMAL WARNING LETTER

Date:

Ref:

Name

Address

Dear

MANAGING CAPABILITY

As a result of our meeting on I am now writing to inform you of the outcome.

The purpose of the meeting was to discuss your performance at Stage of the Managing Capability Procedure. The parties present were (Employee), (Head Teacher) and who was your representative.

The areas of concern which we discussed were

This letter is a formal warning at Stage of the procedure. Your performance is below the standard required and failure to improve could ultimately lead to your dismissal.

I have enclosed a copy of the Performance Improvement Plan, which we completed and agreed. I would ask you to pay particular attention to the requirements of the Plan. We agreed that the timescale for improvements was by *(date)*

If you feel that at any time you are in need of any further support in addition to what we agreed please let me know.

Your performance will be reviewed formally on *(date)* however, I will speak to you informally on a daily/weekly/monthly basis.

You have the Right of Appeal against this warning, which should be within 10 working days of receipt of this letter and should be to School Governor Appeals Committee.

Please acknowledge receipt of this letter by signing the attached copy.

Yours sincerely

.....
(Head Teacher)

cc HR Officer
Trade Union

I acknowledge receipt of an exact copy of this letter.

Signature:..... Date:.....

FLOW CHART FOR MANAGING CAPABILITY PROCEDURE

INFORMAL STAGE

Informal counselling interview
 ↓
 Agree standard of performance required and monitoring arrangements
 ↓
 Make notes of discussion
 ↓
 If no improvement in performance

FORMAL PROCEDURE (Stage 1)

Arrange formal meeting (48 hours notice)
 ↓
 At end of meeting:

- Confirm decision in writing
- Set up attendance improvement plan
- Contact HR Officer and arrange appointment at OHU if appropriate
- Issue formal warning to employee including agreed time limit of improvement

If no improvement during agreed time consider moving to Stage 2
 ↓

FORMAL PROCEDURE (Stage 2)

Arrange formal meeting (48 hours notice)
 ↓
 At end of meeting:

- Confirm discussion and action points (in writing)
- Set up a **final** performance improvement programme
- Issue a **final** warning to employee (explain outcome if they fail to meet standard required)
- Employee has Right of Appeal

If no improvement within agreed time limit consider moving to Stage 3
 ↓

FORMAL PROCEDURE (Stage 3)

Write to employee giving at least 10 working days notice of Formal Capability Hearing. Convene Panel.
 ↓

Panel makes determination/decision.
 ↓

Employee notified of outcome and Right of Appeal.