

Capability Policy

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1. Introduction

- 1.1 Lord Deramore's Primary School is committed to providing high-quality education to the community and to establishing appropriate work standards for school employees. It is vital that poor performance is identified and tackled appropriately and as promptly as possible to minimise any negative impact upon educational provision.
- 1.2 In most cases, where instances of underperformance are identified, employees will be given the opportunity to address these initially under Section 11 of the Appraisal Policy. If sufficient improvement is not made under that policy, or where significant concerns arise, the Capability Policy will apply.

2. Aims and Principles

- 2.1 This policy aims to:
- Help employees to improve their job performance wherever possible to meet the required standards
 - Enable the school to deal with cases of underperformance as quickly and effectively as possible
 - Promote fairness and transparency by providing written procedures that are specific, clear and applied consistently
- 2.2 Employees must acknowledge that good job performance is a critical part of any employment relationship and is accepted as the norm. As such, they must take whatever action is necessary to improve their performance and be open to and act upon constructive feedback.
- 2.3 The school will take all reasonable steps to try to avoid capability problems amongst staff by ensuring that there are clear and robust practices in place around recruitment, performance management, job design and work allocation, induction and ongoing professional development. The school's policies covering these areas are available from James Rourke. Issues such as lack of resources or equipment or problematic working relationships may also impact on employee performance and the school will take steps to resolve these issues informally without recourse to this policy.
- 2.4 Despite these measures, there will be occasions when an employee is unable to meet the required standard of work performance despite his or her best efforts. This could be because the employee is lacking in knowledge, skill or ability. Capability is assessed with reference to skills and aptitude relevant to the position held by the employee and their competence to perform their duties and responsibilities.

- 2.5 In situations where poor performance is due to an employee's wilful or deliberate carelessness, negligence or lack of effort, then this will be dealt with under the school's Disciplinary Policy, following consideration of any underlying reasons, e.g. as a result of health issues.
- 2.6 Cases involving ill-health capability will be dealt with through the school's Attendance Management Policy and Procedure.
- 2.7 If there is any possibility that poor performance may be linked to illness, injury or other physical or mental impairment, advice will be obtained from Occupational Health before actions are taken under this policy, subject to the usual employee consents.
- 2.8 The school's Appraisal Policy will be applied fully and consistently to ensure any concerns about an employee's performance are raised at an early stage. Appropriate action will be taken under the informal support plan and formal meeting stages of that policy to address issues of under-performance.
- 2.9 Generally, only where this has happened and serious concerns about performance remain will action under this policy be initiated. However, in exceptional circumstances, where there are significant and serious concerns regarding the employee's performance, it may be appropriate to proceed straight to this Policy.
- 2.10 Employees will have the right to be accompanied at all stages of the Capability Policy by their trade union representative or a workplace colleague. If the representative cannot attend on the proposed date, the employee will be required to suggest a reasonable alternative time and date not more than five working days after the original date.
- 2.11 It is recognised that the capability process can be difficult for employees and all reasonable steps will be taken to minimise this impact. If performance concerns are raised regarding an individual with an existing mental health condition, which they have previously disclosed as a disability, the school will make reasonable adjustments to the process, taking into account appropriate medical advice.
- 2.12 If a concern or grievance is raised regarding any matter being dealt with under this Policy it should be considered as promptly as possible within this process. Issues should only be referred to be dealt with through the grievance policy where they are not related to the substance of the individual case and will be considered by a separate individual.

3. Application

- 3.1 This policy applies to all employees of the school except those who are within their probationary period and Early Career Teachers (ECTs) in their statutory induction period.
- 3.2 This policy will also apply to an employee who is a trade union representative. However, the school will discuss the matter with an official employed by the union at the commencement of the procedure, after obtaining the employee's agreement.

4. Capability Procedure

- 4.1 The Capability Policy and Procedure will be used when:
- it has not been possible to effect the required improvement in performance under the Appraisal Policy, or
 - where significant and serious concerns have arisen which are not appropriate to be dealt with under that policy.
- 4.2 Line managers must be clear that there are sufficient concerns regarding an individual's performance, and there is a pattern of underperformance sufficiently serious to warrant dealing with the matter through the Capability Procedure. This will include documentary evidence of sustained underperformance. The concerns should not come as a surprise to the individual due to the issues having been raised during normal performance management and appraisal arrangements.

5. Formal capability meeting

- 5.1 To commence the process, the employee will be invited to a formal capability meeting. This meeting will be held with the Headteacher or other nominated senior leader. The employee's line manager, or another relevant manager, may also be asked to attend if they have been responsible for managing the employee's performance under the Appraisal Policy. At this point the employee will be informed that the Appraisal Policy no longer applies.
- 5.2 If the performance concerns relate to the Headteacher, the process will be managed by the Chair of Governors or a committee of the Governing Body.
- 5.3 An HR advisor and/or appropriate member of staff from the school improvement service will be present to advise at any formal capability meeting if requested. The employee may be accompanied by a work colleague or trade union representative.

- 5.4 The employee will be given at least five working days' notice in writing of the meeting. The letter will outline the areas of concerns regarding their performance and include copies of any documentary evidence which will be referred to at the meeting. They will also be provided with a copy of this policy.
- 5.5 The purpose of the meeting is to:
- Discuss the issues of under-performance which have been identified and ensure there is common understanding regarding the areas of concern and the standard of performance which is required
 - Consider any mitigation or other factors affecting the employee's performance
 - Determine the next steps in the process and, if applicable, agree a formal action plan including timescales, targets and standards and how these will be monitored
 - Agree appropriate support arrangements for the employee including relevant training and guidance if required, and how this will be provided
- 5.6 If it becomes clear that further information or investigation is needed, the meeting will be adjourned for an appropriate length of time to allow this to happen.

Outcome of the formal capability meeting

- 5.7 The possible outcomes of the formal capability meeting are as follows:

Insufficient grounds for pursuing a capability issue

- 5.7.1 Where the Headteacher or nominated senior leader believes 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, then the employee will be notified and this will be confirmed to them in writing within 5 working days.

Sufficient grounds for pursuing capability

- 5.7.2 Where there is a continued concern about the standard of performance, a formal support plan and review period will be instigated.
- 5.7.3 The duration of the review period will be considered on a case-by-case basis. The timetable for improvement will need to be reasonable and proportionate, but not excessively long, and will provide sufficient opportunity for an improvement to take place. The timescale may also reflect the amount of time and support an employee has already received.

- 5.7.4 The implications of failing to make the required improvement will be discussed with the employee and they will be notified that failure to improve within the review period could lead to dismissal. They will also be notified that, where performance is being dealt with under the capability procedure then pay progression will not be granted (teaching staff only).
- 5.7.5 The employee will be issued with a letter following the meeting which details the discussions held, the outcome reached and full details of the associated formal action plan if relevant.

Formal action plan

- 5.8 The formal action plan will give clear guidance on the improved standard of performance needed to end the capability procedure; this may include the setting of objectives and targets focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made. During the review period, regular monitoring and evaluation of performance will be undertaken and guidance, support and training, if necessary, will be provided.
- 5.9 The plan will also detail who will be undertaking the monitoring activities under the action plan. This will usually be the manager who is leading the process but some monitoring activities may be undertaken by other senior leaders or managers within the school provided this is detailed within the action plan.
- 5.10 Where at all possible, separate individuals will undertake the support and monitoring functions under the action plan.
- 5.11 Every attempt will be made to agree the formal action plan with the employee and they will be asked to contribute their views on the support which would help them achieve the required improvement.
- 5.12 One or more meetings may be held during the review period to review the progress made and amend the formal action plan if required. As a minimum there will be a mid-point review meeting. The number and timing of these meetings will be agreed when the formal action plan is put in place. The employee may be accompanied at any such meetings by a work colleague or union representative.

6. Formal review meeting

- 6.1 At the end of the review period, a meeting will be held to review and assess performance against the action plan. At least five working days' notice will be given for the meeting and the employee may be accompanied by a union representative or colleague.
- 6.2 At this meeting, the employee will be asked to demonstrate what steps they have taken and the improvements against the plan they believe they have made.
- 6.3 The Headteacher will discuss the employee's progress against the action plan and may ask other staff involved in undertaking monitoring and providing support under the plan to attend the meeting to provide feedback.
- 6.4 Once all relevant information has been considered, the Headteacher will confirm if the employee's performance has reached the required standard or not.

Outcome of the formal review meeting

- 6.5 The possible outcomes of the formal review meeting are as follows:

Improvement to the required standard

- 6.5.1 If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure will end. This decision will be confirmed in writing to the employee within 5 working days of the meeting and the employee will re-enter the usual appraisal cycle.
- 6.5.2 In such cases, it may be appropriate to continue some of the support arrangements which were put in place under the action plan, to ensure that the employee can sustain their improvement. This will be discussed at the final review meeting and any ongoing arrangements agreed with the employee.
- 6.5.3 If the employee's performance subsequently dips within a timescale appropriate to the job role and work cycles (not normally less than ½ a term), the school may determine that the employee will return to the formal stage of the Capability Policy rather than initially dealing with the concerns under the Appraisal Policy. In such cases, the Headteacher will arrange a formal capability meeting to discuss the concerns with the employee. At this meeting the Headteacher may determine either that the employee will be subject to a further formal review period or progress directly to a capability hearing.

Significant improvement made but standards not fully achieved

6.5.4 The employee has demonstrated significant improvement but has not reached the required standard though there is a realistic probability that they will be able to do so in a reasonable timescale. This will require a further period of support and monitoring with an updated formal action plan, followed by a further formal review meeting and subsequent decision. At this further stage it is likely that the decision taken will be either that improvement has been made to the required standard or there has been a failure to reach the required standard, with a third period of support and monitoring being appropriate only in exceptional cases.

6.5.5 There may be occasions where specific targets are given greater weighting, and that if they are not achieved, despite others having been met, a decision is made that the individual has been unsuccessful. In such situations, the individual will be made aware, before the action plan has commenced, of the significance of certain targets, when applicable.

Failure to reach the required standard

6.5.6 The employee has failed to show sufficient improvement towards achieving the targets to satisfy the Headteacher that the individual is capable of achieving and maintaining the required standards of performance in the post. This will result in the case being referred to a Capability Hearing.

6.5.7 The decision and main points of the formal review meeting will be recorded in a letter issued to the employee.

7. Capability Hearing

7.1 The Capability Hearing will be convened to consider the continued employment of the member of staff and will be held with Headteacher or a committee of no less than three members of the Governing Body. The hearing will not be conducted by the Headteacher if they have been responsible for managing an earlier stage of this policy. The hearing officer/panel will be advised by an HR advisor and school improvement representative if required. It is recommended that a note taker is also present.

7.2 The employee will be notified of the hearing in writing and given at least 10 working days' notice.

7.3 The notification letter will confirm:

- The arrangements for the hearing, including the date, time, location and who will be present
- The fact that the hearing is being held under the school's Capability Policy and how a copy of this can be accessed by the employee
- The employee's right to be accompanied by a trade union/professional association representative or workplace colleague
- That the hearing officer/panel may be advised by an HR representative and if a school improvement advisor will be present
- That a possible outcome of the hearing will be the termination of the individual's employment

7.4 In addition, the employee will also be provided with any documentary evidence which will be considered at the hearing regarding the identified areas of underperformance and the actions which have been taken including under the formal action plan.

7.5 Should the employee wish to have any written evidence considered by the hearing officer/panel then this must be submitted to the school at least 48 hours prior to the hearing.

7.6 If the employee fails to attend the capability hearing, without good reason, the hearing officer/panel will decide whether to proceed in the employee's absence or to reconvene the hearing at another time. Before such a decision is taken, attempts should be made to contact the employee to ascertain the reason for their absence.

7.7 At the hearing the hearing officer/panel will consider all the evidence relating to the case, reviewing the actions taken and support provided at previous stages, the impact of the employee's performance on other employees and service delivery and any information and mitigation provided by the employee.

7.8 Other staff involved in a monitoring or supporting role within the capability process may be asked to attend the hearing if required to answer questions or present information. The employee and their representative will be asked to present their views at the hearing.

7.9 The possible outcomes of the capability hearing are as follows:

Improvement to the required standard

7.9.1 If the hearing officer/panel believes that performance has been satisfactory and there is confidence that it can be sustained, the capability procedure will end and the employee will re-enter the appraisal cycle.

7.9.2 If the employee's performance subsequently dips within a timescale appropriate to the job role and work cycles (not normally less than ½ a term), the school may determine that the employee will return to the formal stage of the Capability Policy rather than initially dealing with the concerns under the Appraisal Policy. In such cases, the Headteacher will either arrange a formal capability meeting or the capability hearing will be reconvened.

Significant improvement made but standards not fully achieved

7.9.3 The employee has demonstrated significant improvement but has not reached the required standard though there is a realistic probability that they will be able to do so in a reasonable timescale. In such cases the review period may be extended by up to four weeks, but taking into account the employee's working pattern and the capability hearing will reconvene at the end of this period to consider progress against the action plan.

Failure to reach the required standard

7.9.4 In such cases the employee will be dismissed on the grounds of incapability with an appropriate period of statutory or contractual notice (whichever is greater).

7.9.5 The employee will be notified of the decision of the capability hearing in writing within five calendar days of the meeting.

7.9.6 In the event of failure to reach the required standard, the letter will specify the reasons for dismissal, the arrangements for notice and the right of appeal. The Local Authority will confirm the dismissal decision and the date on which employment will end.

8. Right of Appeal

8.1 An employee has the right of appeal against any action imposed by the Hearing Officer/Panel. This must be submitted in writing within 10 working days of the receipt of the letter detailing the action and must state the grounds for appeal. The employee will be notified in writing of the appeal hearing arrangements, including their right to be accompanied. No less than a minimum of 10 working days' notice will be given of the date of the appeal panel hearing.

8.2 The appeal will be heard by a panel of no less than three members of the Governing Body not previously involved with the case. This will hear the representations and recommendations brought by the Headteacher and any representations that the employee may wish to make.

9. Staff absence during the procedure

9.1 Action is required if sickness absence intervenes during a capability procedure. Headteachers should ensure the usual sickness absence procedures are adhered to without delay.

9.2 If long term sickness absence appears to have been triggered by the commencement of a formal capability procedure, advice will be taken from the school's occupational health service to assess the person's health and fitness to participate in capability processes, subject to the usual employee consents.

10. Interaction with the Disciplinary Policy

10.1 If, at any stage, the school has good reason to believe that the under-performance is due to poor conduct or lack of effort on the part of the employee, the capability process may be halted and the disciplinary policy invoked.

10.2 The employee will be informed of the change in process and this decision will be confirmed in writing to them.

11. Record keeping and confidentiality

11.1 As part of the appointment process for teaching staff, schools are obligated when requested, to include in employment references details about whether the individual has been subject to capability procedures in the previous two years. The school will ensure that appropriate records are retained on the employee's personal file to enable accurate employment references to be provided. Such records will be kept in line with data protection legislation and requirements.

11.2 All employees involved in or with knowledge of capability issues must conduct themselves appropriately and treat all information confidentially and in accordance with their role in the process. Information regarding capability processes will only be shared with relevant parties