# Grantham Villages' CE Primary Schools Federation

Marston Thorold's Charity Church of England Primary School

# Capability Policy and Procedure

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# Schools Capability Policy and Procedure

This document applies to Community and Voluntary Controlled Schools, and is advisory for Foundation and Voluntary Aided Schools.

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# SCHOOLS CAPABILITY POLICY AND PROCEDURE

## PURPOSE

Head Teachers and Governing Bodies aim to foster and maintain a culture in which staff are encouraged and empowered to manage and improve their own performance and results. Managers support employees by providing clarity on the performance standards expected, and training and developing their people to assist them in achieving these required standards.

Managing performance is an on-going process - it operates as a continuous cycle. These procedures are a means of encouraging improvement in under or poor performance. Informal approaches to manage any capability issues are always encouraged first, before referral to the formal Capability Procedure. This includes identifying whether further training, support, coaching, more tools/resources, improved communication or working relationships may resolve the capability issues.

## PRINCIPLES

- This policy and procedure applies to all employees excluding Early Careers Teachers and fixed term contracts of less than one term. For support staff in schools, this policy applies following completion of a probationary period. Should a support staff employee be underperforming in their role during their probationary period, the probationary procedure will apply Probation Policy.

- "Working days" are defined as week days (Monday-Friday), excluding bank holidays and statutory holidays, regardless of the actual days worked by any employee.

- The performance of all employees will be monitored through regular 1 to 1 or supervision meetings and discussions on an on-going basis, and will be reviewed as part of the Induction and/or Appraisal Process.

- Head Teachers and managers are committed to supporting the development and improvement of individual performance to contribute to the school's objectives.

- This policy and procedure is to be used where an employee's performance falls short of expected standards.

- When dealing with an employee's under or poor performance, the manager will:
    - allow sufficient time for improvements in performance;
    - consider training and support, and additional guidance.

- If it is the Head Teacher's capability which is the cause for concern, the Chair of Governors or the Executive Head Teacher (where there is one) will undertake the role as defined within this policy and procedure for the Head Teacher/Manager. Governors are advised to consult their HR support.

- When determining whether an employee is under-performing, managers will take into account any reasonable adjustments required under the Equality Act 2010 and/or any agreed programme of training/support. Managers will also take into account any other factors that may be impacting on an employee's performance.

- Should an underlying medical condition(s) be identified and confirmed as potentially having an impact upon the employee's performance, an Occupational Health referral may be carried out, and/or referral to other appropriate employee assistance and support services (see LCC Employee Support Policy ). Management will aim to support the employee with any reasonable adjustments, or consideration for redeployment on medical grounds, as recommended by Occupational Health. Where an employee declines a referral to Occupational Health, the Head Teacher/manager should explain that without such a report, management decisions will be made using the information available.

The Role of Governors

Governors should not normally be involved with the capability procedure before an appeal hearing following the dismissal of an individual. Where it is the Head Teacher's capability that is in question the Chair of Governors or other appropriate governor will assume the role of the manager. Where dismissal is being considered the decision will normally be taken by the Head Teacher. There are exceptional circumstances, under the Education Act 2003, where the Governing Body may be required to apply alternative arrangements if the process reaches a possible dismissal stage. The circumstances where this may apply are:

- a Head Teacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities;

- a Head Teacher subject to suspension, disciplinary procedures (including capability), or disciplinary action;

- where LCC has made representations to the Chair of the Governing Body on grounds of serious concerns about the performance of the Head Teacher;

- where the Head Teacher has failed to abide by financial limits agreed by the Governing Body for any school purpose;

- where the Governing Body of a faith school has agreed staffing policies, which provide for Governor involvement in the interests of preserving the school's religious character.

Where any of the above circumstances apply, schools are strongly advised to consult their HR support for assistance.

The Role of LCC

LCC has advisory rights as regards all proceedings of a Governing Body of all community, voluntary controlled, community special and maintained nursery schools where potentially a dismissal may take place. This will normally be done through the school's HR provider in consultation with the HR Service of LCC. This also applies to foundation, voluntary aided, and foundation special schools where the Governing Body have accorded the authority those rights of attendance and giving advice.

INFORMAL APPROACH

Teacher / Individual Experiencing Difficulty

Where a Head Teacher/manager is concerned about an employee's work performance, the Head Teacher/ manager will discuss the issues with the employee as soon as possible as part of their normal day-to-day management role. This will happen as part of normal supervision or 1 to 1 meetings. Discussions about an employee's under-performance will be conducted in an appropriately supportive manner and will normally involve the employee and their Head Teacher/manager only. However, in the case of teaching staff, it may be appropriate for the Head Teacher/manager to seek appropriate educational specialist support, for example, the school's Locality Lead or appropriate consultant.

The Head Teacher/manager will ensure the employee understands the purpose of these discussions, and, where under performance is identified, the possible next steps if performance does not improve. This can include, but is not limited to, invoking the capability procedure. The Head Teacher/manager will explain the aspects of the employee's performance that they feel the employee needs to improve upon. The employee's views on their own performance should be taken into account, and efforts will be made by the manager at all stages to understand the problems being experienced and the reasons for them.

The Head Teacher/manager and employee will discuss what support or training is necessary in helping the employee to improve. The manager will allow a fair and realistic time period to enable the employee to improve to a satisfactory standard. The length of time will depend on the nature of the under- performance and any support in place.

The main points of discussions will be documented by the manager and retained on the employee's supervision /1 to 1 file, and a copy provided to the employee.

Early Careers Teacher (ECT) Induction

ECT's are not covered by the appraisal process whilst within the ECT Induction period.
Therefore, if it becomes apparent that an ECT is not making satisfactory progress, the Head Teacher/manager will ensure that additional monitoring and support is provided. Managers will not wait for formal assessment meetings to put this support in place. ECT's will be made fully aware of the areas of their practice where improvements are required and will be given every opportunity to improve.

Transition Meeting

If the outcome of a teacher/individual experiencing difficulty process, or any additional support provided through an ECT Induction, is that unsatisfactory improvement to performance has been made, the individual will be invited to a Transition meeting to determine whether or not formal capability proceedings will commence. The individual will be provided with at least 5 working days' written notice of this meeting, being fully advised of the purpose and matters to be discussed, and of their right to be accompanied.

Further detail of the Teacher/Individual Experiencing Difficulties process, and Transition meetings, is contained within the Teacher Appraisal Policy and Support Staff Appraisal Policy.

CAPABILITY PROCEDURE

If the employee's performance does not improve to the required standard following informal discussions, Head Teacher/manager may move to the capability procedure. During the capability procedure, the Head Teacher/manager will provide the necessary advice, coaching, guidance and support in addition to developing a Performance Improvement Plan in order to assist the individual in attaining and maintaining the required standards of performance.

By instigating the procedure, it will generally be understood that the Head Teacher/manager has concerns about the performance of the employee in the role they undertake. A potential outcome of any formal capability meeting may be to take no further action however, it is recognised that this will be by exception as the overarching commitment is to provide support to enable an employee to improve their performance and to fulfil their job role to a good standard.

Capability Meeting

Where performance issues are not resolved through an informal approach, the manager will invite the employee to a Capability Meeting. The Head Teacher/manager will write to the employee stating the concerns regarding their performance and the time and place of a capability meeting, providing a minimum of 5 working days' notice of the meeting, and will arrange for a note-taker to be present at the meeting.

Throughout this formal procedure, the employee may bring a companion who is a trade union representative, a work colleague, or an official employed by a trade union. No other companions will be permitted to attend the meeting. Where there are grounds for a reasonable adjustment for a disabled employee to be made, to permit an alternative companion, the employee should discuss this with the manager. In all cases, the employee must tell the manager who their chosen companion is, at least 24 hours before the capability meeting.

If the trade union official is not known to the school or LCC, they will be required to provide documentation from the trade union in question, stating that the companion is a union representative and is authorised by that union to represent employees.

The companion, if employed by the school or LCC, is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so. Throughout this formal procedure, if the employee or companion are unavailable at the time the meeting is scheduled, a request can be made to re-schedule it to take place within the following 5 working days.

As the capability meeting will usually be the result of other discussions, for example, performance reviews, 1 to 1s, any notes from these prior meetings may be referenced in the discussion.

At the meeting, the Head Teacher/manager will discuss with the employee the areas of concern and the improvements required, setting targets for these. The employee will be able to outline any of their concerns, and discuss the support they require to improve. A Performance Improvement Plan will be discussed and completed which will detail:

- the improvements that need to be made and the targets set;
- timescale for improvements (monitoring period);
- what training and support will be provided;
- what monitoring and review will take place, and to what frequency.

The recommended timescale within which the employee should seek to improve their performance is the Head Teacher/manager's responsibility to set, and must be reasonable to allow the employee the opportunity to improve. As a recommendation, timescales should allow at least 1 month (4 working weeks) for improvements to be made.

Following the meeting, the Performance Improvement Plan will be forwarded to the employee, and confirmation in writing will be provided of any actions and timescales agreed.

First Capability Review Meeting

The Head Teacher/manager will monitor the performance of the employee and provide feedback by holding a Capability Progress Review Meeting at the end of the monitoring period. The employee will be provided with a minimum of 5 working days' notice of this meeting, and will be reminded of their right to be accompanied. Where the first Capability Meeting was held by a manager, the Head Teacher will also attend this meeting if it is felt that satisfactory improvement may not have been made and a further monitoring period may be set.

The discussion will include the following:

- a review of the monitoring period and support provided,
- a review of the progress against the performance improvement plan.

At this review, there are three possible outcomes:

i. Satisfactory improvement made and no further action required.

Where the outcome is that satisfactory improvement has been made, and the targets reached, the employee will be advised that no further action will be required. This decision will remain live for 12 months and therefore if satisfactory improvement proves only to be of a temporary nature, the Head Teacher retains the option to return immediately to this point in the procedure.

ii. Significant improvement made, however, extension of review period required. The performance improvement plan should be revised to cover the improvements required and which targets remain for the extended review period.

iii. Unsatisfactory review and a second monitoring period set.

- The performance improvement plan will be revised to cover the improvements required and which targets remain for the second monitoring period;
- Any further training and support that is required and can be provided;
- Consideration of any extenuating circumstances that may be affecting the employee's performance;
- Consideration of withholding an increment until the level of performance has reached the required standards;
- The employee will be advised that if the level of performance is not improved and maintained by the end of the review period it may result in a formal capability hearing, which could lead to dismissal on the grounds of capability.

In the case of outcome ii) or iii), the recommended timescale within which the employee should seek to improve their performance is the Head Teacher/manager's responsibility to set, and must be reasonable to allow the employee the opportunity to improve. As a recommendation, timescales should allow at least 1 month (4 working weeks) for improvements to be made.

Following the meeting, the Performance Improvement Plan will be forwarded to the employee, and confirmation in writing will be provided of any actions and timescales agreed.

Second Capability Review Meeting

The Head Teacher/manager will monitor the performance of the employee and provide feedback by holding a Second Capability Review Meeting at the end of the monitoring period. The employee will be provided with a minimum of 5 working days' notice of this meeting, and will be reminded of their right to be accompanied.

This meeting will normally be attended by the Head Teacher, the employee, their companion and a note taker.

The discussion will include the following:

- a review of the monitoring period and support provided;
- a review of the progress against the performance improvement plan.

There are 3 possible outcomes of this meeting:

i. Satisfactory improvement made and no further action required.
Where the outcome is that satisfactory improvement has been made, and the targets reached, the employee will be advised that no further action will be required. This decision will remain live for 12 months and therefore if satisfactory improvement proves only to be of a temporary nature, the Head Teacher retains the option to return immediately to this point in the procedure.

ii. Significant improvement made, however, extension of review period required.
The performance improvement plan should be revised to cover the improvements required and which targets remain for the extended review period.

iii. There is an unacceptable level of improvement and therefore, a capability hearing is to be convened.

An outcome letter will be sent to the employee following the meeting.

Capability Hearing

The Head Teacher will be responsible for convening a Capability Hearing where there has been an unsatisfactory level of improvement. The Head Teacher may be accompanied by their HR provider and a note taker.

The employee will receive 10 working days written notification of the requirement for them to attend a Capability Hearing, and will confirm the details of the time and venue. This notification will contain sufficient information about the performance concerns and confirm that an outcome may be dismissal. Copies of previous performance improvement plans, notes of meetings, evidence relating to performance, will be provided 5 working days prior to the meeting by both parties to enable appropriate preparation. The documents provided prior to the meeting should include all documentation that will be relied on in the meeting to support or dispute the performance concerns.

The notification letter will also advise the employee of their right to be accompanied at the hearing. If the employee or companion is unavailable at the time the meeting is scheduled, a request can be made to re-schedule it to take place within the following 5 working days. Failure to attend the original or re-scheduled hearing without notification or just cause, may result in a decision being made in the absence of the employee. Written submissions will be considered, if these have been provided.

Potential Outcomes of Capability Hearing

i. Significant improvement made, however extension of review period required. The performance improvement plan will be revised to cover the improvements required and which targets remain for the extended review period. Should the employee not have made satisfactory progress at the end of this period, the capability hearing will be reconvened.

ii. Dismissal with notice.
The employee may be dismissed on the grounds of capability due to their continued unsatisfactory work performance.

If the decision is one of dismissal it will be communicated to the employee orally immediately after it has been reached and will then be confirmed in writing. The letter confirming the dismissal decision will inform the employee that they can appeal against the decision to a committee of the governors.

Any dismissal must give the appropriate period of notice required by the employee's terms and conditions of employment. However, there are alternatives to placing the employee back into their place of work to serve out their period of notice and these should be explored with the assistance of the School's HR provider.

For community, voluntary controlled, community special and maintained nursery schools, following any initial dismissal determination, notification of the decision must be sent to LCC who will within 14 days issue a termination of employment letter. If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded.

For foundation, voluntary aided and foundation special schools, following any initial dismissal determination, notification of the termination of the contract will be issued by the school. If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded.

Withholding Pay Progression Increments

Consideration will be given as to whether an employee should progress through the pay spine whilst their capability is under review.

- Teaching Staff
  Pay progression will be in accordance with the school's pay policy. Once a formal capability process commences the appraisal process will be paused. Pay progression is awarded following a successful appraisal review therefore there will be no opportunity for incremental pay progression whilst being monitored under the formal capability process.

- Support Staff (Green Book Employees)
  The conditions of service for support staff allow for the withholding of increments where performance is not satisfactory. If the employee's performance becomes

satisfactory and is maintained, a pay progression increment can be paid at the next increment date, but this will not be backdated.

Maintaining Performance Improvements

Improvements in performance must be maintained to an acceptable level. Failure to maintain improvements within a 12 month period of any informal or formal review may result in the manager returning immediately to the same stage of the procedure.

Appeals

An employee has the right to submit an appeal against dismissal on the grounds of capability. An appeal may be made in writing within 10 working days from the date that the written confirmation is deemed to have been received. For full details of the appeals procedure, refer to the Schools Appeals Policy.