



# Whole School Capability Policy & Procedure

Nov 2016

# Capability Policy

The Governing Body of Benton Dene Primary school/college adopted this policy and procedure on 28<sup>th</sup> November 2016, it is subject to periodic review. This policy and procedure is aligned with the objectives and principles contained within the Schools Managing Staff Performance - Policy Statement.

## 1. Purpose and Scope

- 101 This policy sets the arrangements that will apply when employees fall below the levels of competence that are expected of them.
- 102 The policy applies to all categories of employees directly employed by school who work under a contract of employment except where such employees are undergoing a probationary period of employment.
- 103 The purpose of this policy is to assist employees whose performance gives cause for concern to achieve the necessary improvement.
- 104 This policy will be applied fairly and consistently regardless of a person's gender, gender identity, marital status, employment status, sexual orientation, race, spoken language, ethnic or national origins, faith, religion, beliefs, disability, age, trade union/professional association membership or activity together with any political view or affiliation.

## 2. Application of the policy

- 201 This policy relates exclusively to the capability of employees where there are serious concerns regarding performance that the separate appraisal process has been unable to address.
- 202 Where circumstances lead to the capability policy being accessed the employee's appraisal cycle will be suspended and the employee will be notified in writing by the Headteacher of this action. The letter will advise that the employee's performance will now be managed under the school capability procedure and the implications of this action.
- 203 It is strongly advised that you speak to your Schools Link HR Business Partner when considering the use of this policy. In cases relating to teaching and learning it may also be beneficial to seek advice from an external advisor (i.e. member of school improvement team).
- 204 Where through this policy the identified concerns are successfully addressed and

are eliminated the capability procedure will cease and the appraisal process will re-start.

## **Capability Procedure**

### **1. Entry into Capability**

101 Where through the schools appraisal process the appraiser has identified serious concerns in performance, that the appraisal process is unable to address, they will refer the matter to the Headteacher. Where the case relates to the Headteacher the Governing Body will access advice from their external advisor or Manager of the HR Advisory Service. In such circumstances should the procedure be used then the lead role will be carried out by a designated person.

Based on the information received the Headteacher will either;

- a. advise the appraiser of additional supportive actions that can be taken within the appraisal cycle; OR
- b. determine there is a cause for concern requiring the appraisal policy to be suspended and the capability policy and procedure to be invoked.

102 Where (b) is proposed the Headteacher will seek guidance on the procedure from their school link HR Business Partner.

103 The employee will be notified in writing by the Headteacher that the appraisal system will be suspended and the implications of this action, confirming their performance will instead be managed under the capability procedure. In addition the employee will be reminded of their ability to contact their Trade union/Professional Association for advice.

104 It is expected that cases will enter this procedure at the informal stage.

105 It is recognised that in extreme circumstances it may be necessary to enter at the formal stage of this procedure. Examples of such circumstances are jeopardy of pupils education, risk to organisation or failure to comply with the procedure. This action should not take place without first seeking advice and giving full consideration to the circumstances.

### **2. Informal measures**

201 The first steps in attempting to improve performance are to identify the reasons or causes of the problem and consider any positive support that can be provided. Where applicable, information relating to the problem identified may be obtained from the school appraisal arrangements.

202 Informal measures of providing additional management support can be beneficial in addressing concerns about an employee's performance; therefore

this option should be explored before moving to Formal Measures.

It is for the Headteacher to determine the time period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place

- 203 Additional management support could include the facility to observe good practice, advice from an experienced colleague or line manager, having a mentor or access to appropriate training or resources. The employee may be able to suggest other methods of support they feel would assist them. This list should not be seen as exhaustive or a requirement but gives an indication of the types of support a Headteacher may consider providing.
- 204 An initial meeting should be arranged to allow discussions between Headteacher and employee to take place in an open and constructive atmosphere and should be regarded as part of the normal working routine. However, where the employee requested may be accompanied by their Trade Union/Professional Association.
- 205 The specific aim of these discussions will be to identify ways in which the employee can be encouraged and helped to improve performance. The employee should be provided with a copy of this Policy/Procedure document. This meeting will provide an opportunity for:
- the Headteacher to clearly identify and illustrate the areas of concern;
  - the employee to respond to the concerns outlined;
  - the employee to acknowledge their own responsibility to fully engage with the procedure and improve their own performance;
  - the Headteacher to outline the standards of performance required to exit the capability procedure;
  - identification of any difficulties which may be preventing satisfactory performance;
  - confirmation of the level of support which will be provided during the period of review;
  - agreement of a reasonable timescale for monitoring and date for a performance review.
- 206 Support or guidance external to the School may be enlisted if deemed appropriate by the Headteacher.
- 207 The Headteacher should confirm in writing to the employee the required improvements and how they will be measured, a programme of support, as well as the timescale over which improvement is to be achieved. In addition

any points raised by the employee will be recorded. The detail should also be collated into the form of an action plan. (An example is at Annex 3)

- 208 Regular monitoring and feedback should take place during the period given for improvement, with the manager meeting with the employee at least fortnightly. At the end of the agreed review period the Headteacher should meet with the employee concerned to discuss the extent to which the performance has improved the need to sustain the performance and any outstanding areas of concern. A brief written record of this meeting and the outcomes arising from it should be kept<sup>1</sup>.
- 209 It is likely that the vast majority of cases will be resolved with this Informal Stage and it will only be necessary to proceed to the Formal Stage in those cases where advice and additional management support have not achieved the required improvement.
- 210 Where it has not been possible to eliminate concerns about an employee's performance by informal means or improvement has not been sustained Formal Measures may be taken.
- 211 The decision to move on from informal measures lies with the Headteacher. It is recommended that advice be sought from the School Link HR Business Partner before moving to the formal stage. It may also be appropriate to consult with the school's external advisor dependent on the nature of the concerns.

### **3. Notification of Formal Capability Meeting**

- 301 A letter should be issued to the employee on behalf of the Headteacher providing a minimum of 5 standard working days notice to the formal capability meeting. The letter of notification will contain sufficient information to enable the employee to prepare to answer the case at a formal capability meeting;
- the concerns about performance and its impact
  - copies of any written evidence;
  - the details of the time and place of the meeting; and
  - their right to be accompanied by a work colleague or a Trade Union/Professional Association representative.

### **4. The Formal Capability Meeting**

- 401 This meeting is intended to establish the facts relating to the concerns contained within the letter to the employee. It will be conducted by the Headteacher. The School Link HR Business Partner may be in attendance at this meeting.

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<sup>1</sup> See appendix 2 for an example review meeting outcome record sheet.

- 402 The meeting allows the employee, 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.
- 403 The meeting may be adjourned, for example if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information.
- 404 During the meeting, the Headteacher will:
- identify the shortcomings in performance;
  - give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures
  - explain any support, training or guidance that will be available to help the employee 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 six and twelve weeks<sup>2</sup>. It is for the Headteacher to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and
  - remind the employee that unsatisfactory improvement within the set period will mean the continuation of the stages within the procedure
  - the setting of revised action plan 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;
  - ensure notes are taken of any formal meetings and a copy sent to the employee alongside a letter detailing the outcome of the meeting. Where applicable a copy will be sent to the employee's representative.
- 405 Once the meeting has concluded the employee will be informed in writing (within 5 standard working days) of the matters covered in the bullet points above and given information about the timing and handling of the review stage. Where applicable a copy will be provided to the Trade Union/Professional Association representative.

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<sup>2</sup> Where an employee has been previously subject to capability procedures within the last 12 months then minimum timescales will apply

## 5. Monitoring and review period following the capability meeting

501 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The employee will be invited to a formal review meeting.

## 6. Formal review meeting

601 As with initial capability meetings, at least 5 standard working days' written notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be represented by a work colleague, a Trade Union/Professional Association representative. The school Link HR Business Partner may be in attendance at this meeting.

602 If the Headteacher is satisfied that the employee 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 employee will be advised the matter will be referred to governors for their consideration.

603 As before, notes will be taken of formal meetings and a copy sent to the employee and Trade Union/Professional Association representative. Once the meeting has concluded the employee will be informed in writing (within 5 standard working days) of the matters covered at this meeting providing information about any additional further monitoring and review period proposed.

Should the outcome of the review be referral to governors the employee will be invited to a decision meeting as set out below.

## 7. Decision meeting

701 The governing body have determined to delegate the power to make decisions at this decision meeting<sup>3</sup> (*delete as appropriate*);

- (a) to one or more governors
- (b) to one or more governors acting with the head teacher

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<sup>3</sup> For aided/Trust/Academies those delegated with the power to make decisions will include that of formal dismissal with appropriate notice. For Community schools In the case of community schools those delegated to make decision will include the power to determine that an employee should no longer work at the school and request the LA to dismiss the employee concerned within 14 days of notification.

- 702 At least 10 standard working days' written notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be represented by a work colleague or a Trade Union/Professional Association representative.
- 703 Once the meeting has concluded the employee and where applicable Trade Union/Professional Association representative, will be informed in writing (within 5 standard working days) of the matters covered at this meeting, outcomes arising from it, as well as accompanying action plan as follows:
- the elements of the employees performance that remain a concern;
  - any improvements that have been made and the need to sustain them;
  - decision reached including any sanctions, any action plan, further review if appropriate;
  - reasons for reaching this decision;
  - right to appeal.
- 704 Where earlier sanctions have been applied or serious concerns around performance are evidenced, a decision may be made that the employee should be dismissed or required to cease working at the school<sup>4</sup>. Before the decision to dismiss is made the matter will be discussed with the school Link HR Business Partner.
- 705 Where dismissal is the outcome the written correspondence will also contain:
- the reasons for the dismissal,
  - the date on which the employment contract will end,
  - the appropriate period of notice
  - their right of appeal.
- 706 An employee wishing to appeal must do so in writing to the Clerk to Governors c/o the school within 5 standard working days of receiving the letter confirming the outcome of the decision meeting. This correspondence from the employee will set out at the same time the grounds for such an appeal.
- 707 The employee should take care to outline the grounds for their Appeal to ensure there is no undue delay in organising an Appeal Hearing. Where there is insufficient clarity as to the grounds of the Appeal, the Chair of the Appeal Panel reserves the right to seek such clarification, prior to arranging the Appeal Hearing. It is the responsibility of the Chair of the Appeal Panel, working with their supporting HR Business Partner, to communicate (via the Clerk to Governors) in writing with the employee, where further clarification is

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<sup>4</sup> In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power is to determine that "the employee should no longer work at the school" and instruct the LA to terminate any contract.

required.

## **8. Appeal**

801 The appeal will be dealt with impartially by 3 members of the governing body in relation to any formal sanctions (including that of dismissal) issued through this procedure.

802 At least 10 standard working days' written notice will be given and the notification will give details of the time and place of the appeal meeting and will advise the employee of their right to be represented by a work colleague, a Trade Union/Professional Association representative.

803 Options for the Appeal Panel to consider as an outcome arising from an Appeal are as follows:

- Appeal is unfounded - no further action is required, original outcome from earlier decision meeting stands
- that after thoroughly exploring the issues raised at the Appeal Hearing the Panel believe it is appropriate to change the previous decision issued<sup>5</sup>, perhaps on grounds of information not available at the original/earlier Hearing, the level of sanction given, or inconsistency.

804 The employee will be informed in writing of the results of the appeal hearing as soon as possible (within 5 standard working days) of the matters covered at this meeting and their outcome. The decision of the appeal panel is final.

## **9. Re entry to capability measures at future date**

901 Employees who have been subject to this policy and procedure may be re entered into the procedure at the stage previously reached. This may occur in cases where the employee's performance falls below the agreed standard during a 12-month period from the date the procedure was halted.

## **10. Capability of Trade Union/Professional Association Representatives**

1001 Although the same capability standards will apply to trade union/professional association representatives as are applied to all other employees, no formal action should be taken until a senior trade union/professional association representative (or permanent official) has been informed of the circumstances of the case.

## **11. Employee Support**

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<sup>5</sup> In accordance with the principles of this policy the Appeal Panel do not have the authority to increase the sanction set at the original hearing.

1101 In cases of capability it is important that consideration be given to appropriate support for the employee, for example the use of a mentor to support the employee<sup>6</sup> in their efforts to improve. The mentor's role must be distinct and not be part of the monitoring progress. In addition employees should be encouraged to access support outside of that available from the school such as their trade union/professional association.

## **12. Sickness absence during procedure**

1201 If sickness absence appears to have been triggered by the commencement of capability procedures the case should be referred to the Occupational Health Unit. In a case of long term absence it may be necessary to run the attendance management procedure in parallel with the capability procedure.

1202 Absences should not cause unreasonable delay to any part of the procedure. Steps should be taken to enable the employee to attend. However, where the employee is unable to attend, these meetings may proceed in the employee's absence. In these circumstances a full account, including the information considered and conclusions reached, should be confirmed in writing to the employee.

## **13. Confidentiality**

1301 All parties taking part in proceedings will, in accordance with this Policy & Procedure, maintain confidentiality at all times during the process.

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<sup>6</sup> Mentor could be useful to enable the employee to access a more experienced individual to discuss ideas/methods relating to work/environment in a supportive non judgemental manner.

## Annex 1

### Warnings that may be issued under the formal stage of capability procedure

When deciding whether a warning is appropriate notes should be taken of the following advice to ensure the reasonableness of any proposed outcome:

- ❑ any warning should be within the range of options available at each stage, as determined by the capability procedure.
- ❑ any warning imposed in similar cases in the past,
- ❑ whether the standards of other employees are acceptable and that this employee has not been singled out,
- ❑ nature of the employees performance record (including current warnings), general work record, work experience, position and length of service within school,
- ❑ any special circumstances that might make it appropriate to adjust the severity of the warning.
- ❑ whether the proposed warning is reasonable in view of all the circumstances,
- ❑ whether any training, additional support or adjustments to the workplace are necessary.

Where it is determined that the performance concerns are unfounded then no further action is required.

Where it is determined that a cause for concern does not require a sanction to be applied then this will be dealt with through additional support and review via a revised action plan.

Where a sanction is deemed appropriate then the following outcomes may be considered dependent upon the severity of the performance issues. Such sanctions will be accompanied by a detailed action plan, inclusive of timeframe for review.

- Written warning - where there is a failure to improve or change performance the employee may be given a formal written warning. A formal written warning will be removed after a period of 12 months.
- Final written warning - where there is a failure to improve or change performance in the timescale set or where the matter is sufficiently serious, the employee may be given a formal final written warning. A formal final written warning will be removed after a period of 18 months.
- Dismissal - where there is a failure to improve or change performance in the timescale set or where the matter is sufficiently serious, the employee may be dismissed with appropriate notice<sup>7</sup>

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<sup>7</sup> You are advised to seek advice from the supporting HR Business Partner and in exceptional circumstances they may also wish to consider alternatives to dismissal.

## Annex 2

### Review Meeting Outcome

Name:

Position held:

Department/Location:

#### Assessment of the Postholder's Ability to Carry Out Duties

(including any action taken, any issues raised by the individual, any additional support and training agreed) continue overleaf if required

Targets/timescale/measurement (continue overleaf if required)

The above has been discussed with the postholder, they have been made aware of the required standard and informed of areas where improvement is sought.

Signed

Position held

Name

#### Signature of postholder

*(to confirm discussion took place) I agree/disagree with the comments above*

Name

Position held

Comments/Reasons

**Annex 3**

**Sample Action Plan**

<b><i>Causes for concern</i></b>	<b><i>What improvements are required?</i></b>	<b><i>How will this be measured?</i></b>	<b><i>Advice &amp;, support, to be provided to achieve improvement inclusive of roles/responsibilities</i></b>	<b><i>Date for review of progress on improvements required</i></b>	<b><i>Have Improvements been met?  Y/N/Partial</i></b>


This action plan will cover the period from (Date) and conclude on (Date).

A review meeting with the Headteacher to discuss the outcome of this plan will take place on (Date)

Signature (Headteacher) \_\_\_\_\_

Signature (Employee) \_\_\_\_\_

## Annex 4

### Decision meeting/Appeal meeting – Suggested Format

#### Introductions

The Chair of the Panel introduces all parties present and explains how the meeting will be conducted and what is being considered – including adjournments, refreshment breaks, expected behaviour, documentation, etc.



#### Presentation

By the relevant manager from the School (or Chair of Hearing Panel where it is an Appeal). Witnesses called as/where necessary.

Please note: where more than one witness is to be called it is important that that witness is questioned prior to their being excused.



#### Questions

The parties may ask questions relating to the presentation given by the manager from the School (or Chair of the Hearing Panel where it is an Appeal) in the following order:

- Employee (or their work colleague or trade union/professional association representative)
- Panel Members



#### Presentation

By the Employee (or their work colleague or trade union/professional association representative). Witnesses called as/where necessary.

Please note: where more than one witness is to be called it is important that that witness is questioned prior to their being excused.



#### Questions

The parties may ask questions relating to the presentation given by the Employee (or their work colleague or trade union/professional association representative) in the following order:

- Manager from the School (or Chair of the Hearing Panel where it is an Appeal)
- Panel Members



#### Final statements

Will be taken in the following order

- Manager from the School (or Chair of the Hearing Panel where it is an Appeal)
- Employee (or their work colleague or trade union/professional association representative)

All parties then withdraw to allow the Panel to reach a decision. The supporting HR Link will remain during this stage as will the minute/note taker.

The parties may be asked to remain available for either clarification or to be advised of the decision of the Panel.