



SCHOOL CAPABILITY PROCEDURE SUPPORT STAFF

Date: 09/21
Review Date: 09/22

- 1.1 The School aims to ensure that employees are able to achieve and maintain a high standard of performance in their work. To this end it will ensure that standards are established, performance monitored and employees are given appropriate training and support to meet these standards.
- 1.2 This Procedure applies to all school support staff. The aim is to ensure consistent and fair treatment for all.
- 1.3 The procedure has been developed in accordance with relevant employment legislation and the ACAS Code of Practice:

2. STATEMENT OF PRINCIPLES

- 2.1 Oakhurst Primary School is committed to promote equal opportunity and diversity in the workplace. No employee will be discriminated on the grounds of gender, race, nationality, ethnicity, colour, marital status, age, sexual orientation, gender reassignment, political opinion, religious belief, disability or social background.
- 2.2 Employees having difficulty in carrying out their duties to the required standard will be treated with sympathy and understanding and will be given help to correct the deficiency.
- 2.3 At every stage in the formal procedure, the employee will have the right to be accompanied by a trade union representative or a workplace colleague.
- 2.4 No employee will be dismissed on grounds of capability until the programme of improvement and assistance has been exhausted without the employee achieving satisfactory results and there remains an insufficient prospect of improvement within a reasonable timescale.
- 2.5 The employee will have the right to appeal against any formal decision at each stage of the process.
- 2.6 Governors will determine in advance how they will delegate authority for issuing warnings and making initial dismissal decisions in the case of capability cases, having regard to the size of the school and the Heads ability

to remain independent. (See guidance on dismissal and compliance with the Staffing Regulations 2009)

- 2.7 This procedure seeks to ensure that instances of unsatisfactory performance are treated consistently, notwithstanding that each case will be judged on its own merits, and that all employees are made fully aware of their rights and obligations at all stages. If, during discussion, it comes to light that the underlying cause of the unsatisfactory performance is related to a disability, further advice is available from the Schools HR Consultancy team.
- 2.8 Whilst every opportunity will be given for the employee to attend all capability hearings, the non-attendance of the employee will not invalidate the proceedings. The Headteacher/governor panel hearing the relevant stage of the process, may proceed if considered appropriate, or reconvene at another date and time.

3. INFORMAL PROCESS

When instances of under-performance are identified, they should be addressed informally in the first instance by coaching the member of staff. The employee should be informed that this coaching does not form part of the formal capability procedure as the aim is to highlight areas of concern regarding performance and to jointly identify workable solutions that might prevent the formal procedure being invoked.

The coaching process will normally include the re-setting of specific objectives and/or standards of performance and a written record of these should be kept. The objectives should be recorded on the Performance Improvement Plan template (attached as an appendix to this document) and a copy of the plan given to the employee. The manager and employee will meet regularly to review progress, ideally on a weekly or fortnightly basis. The meetings should continue for at least 4 weeks (the review time required will depend on the complexity of the role and the issues) before consideration is given to moving to the formal stage of the Capability procedure.

The aim of the coaching process is to provide support and encourage improvement in the employee, and is a matter between the employee and the line manager. Therefore, the right of the employee to be represented at these meetings by a trade union representative or colleague is not applicable. This does not, however, preclude the employee from seeking advice from a trade union representative or colleague during the review period.

4. FORMAL PROCEDURE

Stage One – First Performance Review Meeting

- 4.1 If the coaching has not resulted in the desired performance within the agreed timescales the line manager should commence performance reviews under the formal stages of this procedure.
- 4.2 A formal Performance Review Meeting will be arranged providing 5 working days' notice. The employee will be advised in writing of the areas of concern and that (s)he may be accompanied by a trade union representative or a workplace colleague.
- 4.2 The aims of the first formal interview will be to:
- explain clearly the shortfall between the employee's performance and the required standard;
 - identify the cause(s) of the inadequate performance and to determine what, if any, remedial action (e.g. training, retraining, support, etc) can be given;
 - obtain the employee's commitment to reaching the required standard;
 - set a reasonable period for the employee to reach the standard and agree on a monitoring programme during that period – with a minimum of 4 weeks and a maximum 12 weeks ;
 - tell the employee that dismissal is a possible outcome if the standard is not met; and
 - advise the employee of the availability of welfare and other confidential support facilities.
- 4.3 The employee should be given the opportunity to provide their explanation for the areas of unsatisfactory performance.
- 4.4 The line manager will consider the employee's explanation and any other mitigating circumstances and determine the action to be taken. This may be:
- That no further formal action will to be taken. Recommendations will be implemented and the employee's performance will be monitored and reviewed on a regular ongoing basis.
 - That the outcome of the review is unsatisfactory. If this is the case, the employee will be given a first written warning.

4.5 The outcome of this interview will be recorded in writing and a copy will be given to the employee together with an extra copy for the trade union representative or workplace colleague.

4.6 The letter will include a written statement that sets out:

- The nature of the unsatisfactory work performance as discussed at the meeting.
- The action required by the employee to improve their performance and how their performance will be monitored over the performance review period. These objectives should be recorded on the Performance Improvement Plan template.
- Any further training or support that is to be provided and by whom.
- The timescale for achieving the required improvement and the date of the next Performance Review Meeting. The review period will be a minimum of four weeks. It may be longer depending on the nature of the unsatisfactory performance, the job role, and the provision of any necessary additional training or support that is required.
- That the employee has the right of appeal against the written warning. This should be submitted within five working days of the date of the letter confirming the action and sent to the Headteacher. The letter should state the grounds for the appeal and enclose any relevant supporting documentation.
- That the written warning is the first formal stage of the capability procedure and a failure to improve could lead to a final written warning and, ultimately dismissal.
- The written warning will be valid for a period of six months from the date of the performance review meeting.
- That the monitoring and review of performance will continue and run concurrently with the appeal process and timescales.

If appropriate, and depending on the circumstances presented at the time, suitable alternative employment can be mutually agreed, if available. Alternative employment does not have to be equivalent in terms and conditions to the current post and it may take the form of a less senior position in the same work area. The employee's current terms and conditions will not be protected.

4.7 Progress will continue to be monitored throughout the review period

Stage Two – Second Performance Review Meeting

At the end of the agreed review period a further formal meeting will be arranged. The notification will be in accordance with that detailed above.

At this meeting the line manager will review the employee's performance against the set objectives over the review period. The employee will be given the opportunity to state their views. The line manager will consider the information presented and determine the action to be taken. This may be:

- (i) If the line manager is satisfied that performance has improved to the required standard, they will advise the employee. The employee will be advised that no further formal action will be taken and future performance will be managed through the normal appraisal and performance management meetings. The employee will be advised that if their performance deteriorates while the written warning is still current (six months from the first Performance Review meeting) formal action will be restarted at Stage One of the Capability Procedure.
- (ii) That the outcome of the review is unsatisfactory. If this is the case, the employee will be given a final written warning.

If appropriate, any suitable and available alternative work can be considered and mutually agreed on the terms outlined in Stage One.

4.8 The line manager will send a letter confirming the final written warning to the employee, ideally within five working days of the meeting. A copy should also be kept on the employee's personal file and used as the basis for monitoring and reviewing the employee's performance during the defined timescales. The letter will include a written statement that sets out:

- The nature of the unsatisfactory work performance as discussed at the meeting.
- The action required by the employee to improve their performance and how their performance will be monitored over the performance review period. These objectives should be recorded on the Performance Improvement Plan template.
- Set a reasonable period for the employee to reach the required standard, and agree a monitoring period. This should be a minimum of 4 weeks and a maximum of 12 weeks.
- Any further training or support that is to be provided and by whom.
- The timescale for achieving the required improvement and the date of the next Performance Review Meeting. The review period will be a minimum of four weeks. It may be longer depending on the nature of the unsatisfactory performance, the job role, and the provision of any necessary additional training or support that is required.
- That the employee has the right of appeal against the final written warning. This should be submitted within five working days of the date of the letter confirming the action, and sent to a senior manager within the relevant Group Directorate, stating the grounds of the appeal and enclosing any relevant supporting documentation. The name of the senior manager will be notified to the employee and their representative at the meeting.

- That the final written warning is the second formal stage of the capability procedure and a failure to improve could lead to dismissal.

4.9 The final written warning will be valid for a period of twelve months from the date of the Second Performance Review Meeting.

Stage Three – Final Performance Review Meeting

Following the written warning, a third Performance Review Meeting to review the employee's performance against the objectives will be arranged, following the established notification procedure

4.10 At this meeting the line manager will review the employee's performance against the set objectives over the review period. The employee will be given the opportunity to state their views. The line manager will consider the information presented and determine the action to be taken. This may be:

(i) If the line manager is satisfied that performance has improved to the required standard, they will advise the employee. The employee will be advised that no further formal action will be taken and future performance will be managed through the normal appraisal and performance management meetings.

(ii) The employee will be advised that if their performance deteriorates while the second written warning is still current (twelve months from the first Performance Review meeting) formal action will be restarted at Stage Two of the Capability Procedure.

4.11 If there has been no (or insufficient) improvement and it is considered that additional support will result in the required performance improvement, the manager will explain to the employee that (s)he has failed to improve and a hearing will be arranged to consider possible dismissal. The employee will receive at least 5 working days' notice of the hearing and be advised of their right to union representation.

Suitable alternative employment, if available, can be considered and mutually agreed at this time on the terms outlined in Stage One and Two.

The Headteacher/Governor Panel will hear the case, If the decision is made to dismiss, further consideration will be given to whether there are any suitable vacancies within the school that the employee would be competent to fill with a reasonable level of training and support. This will be a school decision. If there are, the employee may be given the option of accepting such a vacancy or being dismissed; if such a vacancy is available, the employee will be given full details of the vacancy, in writing, before being required to make a decision;

Alternative employment does not have to be equivalent in terms and conditions to the current post and it may take the form of a less senior position in the same work area. The employee's current terms and conditions will not be protected.

- 4.8 In the absence of suitable work, the employee will be told that the Head has no alternative but to dismiss.
- 4.9 The employee will receive confirmation in writing whatever the outcome of the procedure and the right of appeal will be explained.
- 4.10 If the employee wishes to appeal at any stage of the formal procedure they must follow the process outlined in paragraph 7 below.

5. CAPABILITY DUE TO ILL HEALTH.

- 5.1 All cases relating to ill health will be dealt with in accordance with the Wellbeing and Managing Sickness Absence Policy.

6. CAPABILITY DISMISSALS

- 6.1 Any dismissal under this procedure will be on the grounds of capability and will be confirmed in writing with a second copy for the employee's representative. The employee will usually be given the full period of notice and will not normally be required to attend work unless they agree to perform other duties where their capability will not have a detrimental impact on the Education of pupils. Any outstanding holiday entitlement will be subsumed into the notice period.

7. APPEALS

- 7.1 The employee will be told of their right of appeal to an Appeals Committee of the Governing Body. All appeals must be notified in, in writing, to the Clerk to the Governing Body within 5 calendar days of the date of the warning/ dismissal letter. The employee, together with, if they wish, their trade union representative or workplace colleague and the Head, will be given the opportunity to make representations to the Committee before a decision is taken. The decision of the Appeals Committee will be final.
- 7.2 If an appeal against dismissal is successful then the employee will be reinstated and salary owing back paid.

PERFORMANCE IMPROVEMENT PLAN				
EMPLOYEE'S NAME:		JOB TITLE:		
SCHOOL		LOCATION:		
MANAGER'S NAME		DATE:		
AREAS REQUIRING IMPROVEMENT	ACTIONS REQUIRED (Using SMART objectives)	SUPPORT AND TRAINING	REVIEW DATE	OUTCOME
EMPLOYEE'S SIGNATURE:		DATE:		
MANAGER'S SIGNATURE:		NEXT REVIEW DATE:		