

## HARROW SCHOOLS CAPABILITY TOOLKIT

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## 1. INTRODUCTION

This Toolkit aims to provide more detail on how the policy should be implemented and to guide Governors, head teachers and employees through what can be a difficult process. The guidance notes contained in the Toolkit promote best practice in managing capability matters. Please read through this Toolkit before seeking further professional advice from Human Resources (HR).

- 1.1 Performance Management is the process for assessing the overall performance of Teachers in the context of the individual's job description and any relevant pay progression criteria, and making plans for the individual's future professional development. The review is undertaken once a year but if there are performance concerns at any time in the year then the performance management cycle is stopped and the Capability Procedure is started.

The main numbering in the Toolkit makes reference to the sub-headings in the Capability Policy and Procedure for Schools.

## 2. SCOPE

This toolkit is applicable to school employees employed on Harrow terms and conditions of employment, as well as teachers and head teachers on Teachers terms and conditions of employment.

## 3. ROLES AND RESPONSIBILITIES

The head teacher will be responsible for managing informal capability processes, and for issuing formal sanctions at stage 1 and stage 2 of the process. If the concerns relate to the head teacher, then the Chair of the Governing Body will contact the Director of Education Services to confirm the action they intend to take.

As laid out in the Capability Policy and Procedure for Schools, the Governing Body will be responsible for setting up three different committees where formal sanctions have been applied, including dismissal. These will be set up as follows:

- a) **A Warning Appeal Committee** – This committee will consist of 2 Governors who are impartial to the case being considered for appeal.
- b) **A Staff Dismissal Committee** – This committee will consist of 3 Governors who are impartial to the case being considered, which could result in the dismissal of the employee.
- c) **A Staff Dismissal Appeals Committee** – This committee will usually consist of 3 Governors who are impartial to the case being considered for appeal. This may be reduced to 2 Governors depending on resources.

#### **4. PRINCIPLES**

It should be recognised that entering into the Capability Procedure with an employee can be a very stressful time for the individual and therefore the principles set out in Section 3 of the Policy should closely be adhered to.

However, every employee has a contractual responsibility to achieve a satisfactory level of performance and it is expected that all employees should be committed to achieving this required level.

#### **5. FAIR DISMISSAL PROCESS**

- 5.1 This policy takes account of the Employment Rights Act 1996 in ensuring that all employees are aware of the Capability Policy and takes into account the ACAS Code of Practice.

#### **6. RIGHT TO REPRESENTATION**

An employee must be informed that they may be accompanied to any formal capability meeting by a representative who should be an accredited union representative or work colleague but not a friend, family member or legal representative.

#### **7. WHAT COULD CONSTITUTE A CAPABILITY MATTER?**

Managers should ensure all facts are established to understand whether there is an underlying factor affecting performance, or if there are any mitigating circumstances. Consideration should be given to whether the matter should be considered in line with any other policy and procedure, such as Sickness Absence where health factors have a direct impact on performance. Where concerns regarding the employee's work performance are about carelessness, negligence or willful lack of action, the Disciplinary policy will apply.

#### **8. TEACHER CAPABILITY**

Criteria for assessing Teachers and Head Teacher's performance will be measured against the General Standards and the Department for Education's (DfE's) detailed Teachers' Standards comprising of teaching and standards for Personal and Professional Conduct of teachers listed below. For general guidance the following would constitute a capability matter:

- Where a teacher or head teacher's work performance is falling below an acceptable level AND/OR
- Where a teacher cannot maintain acceptable standards of performance.

The 8 Standards for teachers and head teachers are:

1. Set high expectations which inspire, motivate and challenge pupils	<ul style="list-style-type: none"> <li>• establish a safe and stimulating environment for pupils, rooted in mutual respect</li> <li>• set goals that stretch and challenge pupils of all backgrounds, abilities and dispositions</li> <li>• demonstrate consistently the positive attitudes, values and behaviour which are expected of pupils.</li> </ul>
2. Promote good progress and outcomes by pupils	<ul style="list-style-type: none"> <li>• be accountable for pupils' attainment, progress and outcomes</li> <li>• be aware of pupils' capabilities and their prior knowledge, and plan teaching to build on these</li> <li>• guide pupils to reflect on the progress they have made and their emerging needs</li> <li>• demonstrate knowledge and understanding of how pupils learn and how this impacts on teaching</li> <li>• encourage pupils to take a responsible and conscientious attitude to their own work and study.</li> </ul>
3. Demonstrate good subject and curriculum knowledge	<ul style="list-style-type: none"> <li>• have a secure knowledge of the relevant subject(s) and curriculum areas, foster and maintain pupils' interest in the subject, and address misunderstandings</li> <li>• demonstrate a critical understanding of developments in the subject and curriculum areas, and promote the value of scholarship</li> <li>• demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher's specialist subject</li> <li>• if teaching early reading, demonstrate a clear understanding of systematic synthetic phonics</li> <li>• if teaching early mathematics, demonstrate a clear understanding of appropriate teaching strategies.</li> </ul>

<p>4. Plan and teach well structured lessons</p>	<ul style="list-style-type: none"> <li>• impart knowledge and develop understanding through effective use of lesson time</li> <li>• promote a love of learning and children's intellectual curiosity</li> <li>• set homework and plan other out-of-class activities to consolidate and extend the knowledge and understanding pupils have acquired</li> <li>• reflect systematically on the effectiveness of lessons and approaches to teaching</li> <li>• contribute to the design and provision of an engaging curriculum within the relevant subject area(s)</li> </ul>
<p>5. Adapt teaching to respond to the strengths and needs of all pupils</p>	<ul style="list-style-type: none"> <li>• know when and how to differentiate appropriately, using approaches which enable pupils to be taught effectively</li> <li>• have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these</li> <li>• demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development</li> <li>• have a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.</li> </ul>
<p>6. Make accurate and productive use of assessment</p>	<ul style="list-style-type: none"> <li>• know and understand how to assess the relevant subject and curriculum areas, including statutory assessment requirements</li> <li>• make use of formative and summative assessment to secure pupils' progress</li> <li>• use relevant data to monitor progress, set targets, and plan subsequent lessons</li> <li>• give pupils regular feedback, both orally and through accurate marking, and encourage pupils to respond to the feedback.</li> </ul>

<p>7. Manage behaviour effectively to ensure a good and safe learning environment</p>	<ul style="list-style-type: none"> <li>• have clear rules and routines for behaviour in classrooms, and take responsibility for promoting good and courteous behaviour both in classrooms and around the school, in accordance with the school's behaviour policy</li> <li>• have high expectations of behaviour, and establish a framework for discipline with a range of strategies, using praise, sanctions and rewards consistently and fairly</li> <li>• manage classes effectively, using approaches which are appropriate to pupils' needs in order to involve and motivate them</li> <li>• maintain good relationships with pupils, exercise appropriate authority, and act decisively when necessary.</li> </ul>
<p>8. Fulfil wider professional responsibilities</p>	<ul style="list-style-type: none"> <li>• make a positive contribution to the wider life and ethos of the school</li> <li>• develop effective professional relationships with colleagues, knowing how and when to draw on advice and specialist support</li> <li>• deploy support staff effectively</li> <li>• take responsibility for improving teaching through appropriate professional development, responding to advice and feedback from colleagues</li> <li>• communicate effectively with parents with regard to pupils' achievements and well-being.</li> </ul>

***Standards for Personal and Professional Conduct for teachers and head teachers are:***

A teacher is expected to demonstrate consistently high standards of personal and professional conduct. The following statements define the behaviour and attitudes which set the required standard for conduct throughout a teacher's career.	
Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:	<ul style="list-style-type: none"> <li>• treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position</li> <li>• having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions</li> <li>• showing tolerance of and respect for the rights of others</li> <li>• not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs</li> <li>• ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.</li> </ul>
Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.	
Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.	

- If the performance of the head teacher is in question, the Chair of Governors will invite the Director of Education to become involved.
- If the head teacher becomes directly involved in implementing the Procedure this would prevent them from hearing the case at the Stage 3 (Final Stage) Hearing.
- In every case the cause for concern will have been raised with the teacher, usually through supervision/appraisal meetings and any opportunities for improvement will have been provided prior to any capability action being taken.

- The manager is responsible for standards of performance within the school and these standards should be reasonable and justifiable. The manager should offer teachers appropriate induction, supervision, appraisal, encouragement and support together with regular opportunities for training and development. Communication is key and regular team briefings and expectations about service delivery are important.
- The manager should keep records of times when any capability issues are raised as they may need to refer to them if the teacher fails to meet reasonable work standards.

## **9. INFORMAL CAPABILITY PROCESS**

- The employee should be made aware that there are concerns about their performance, informed of what those concerns are and provided with constructive advice to assist in overcoming those concerns.
- An informal guidance meeting will take place. If possible reference should be made to notes of supervision meetings / or lesson observations where concerns have previously been highlighted and the employee should be provided with examples where their work has not met a satisfactory standard. Agreement should be reached about what additional support is required over and above that provided as part of the appraisal and management processes, in order to improve performance to an acceptable standard and, what the employee's commitment and responsibilities are towards achieving these standards.
- A timescale for improvement should be agreed between the employee and their line manager. It should not be unduly long and will be dependent on the development areas identified. This information should be confirmed in the Performance Improvement Plan (see appendix 2 and 3). At the end of the review period, the employee should be called to an informal guidance review meeting. It should be clearly stated that failure to reach these performance standards, which will be determined via the objectives that are set, may result in the formal process being invoked. In some cases where the concern is so significant it may be acceptable to move straight to the formal process.
- At this stage, as the manager, you must satisfy yourself that there is substance to the concern that acceptable levels of performance are not being met. You must also check that the performance expected is reasonable compared to the employee's job description.
- Check that you are treating the employee in a fair, reasonable and consistent manner with regards to other employees working at the school.
- You need to explore if there are any reasons for performance issues e.g. health issues, home issues, problems within the team or a lack of supervision or support. Encourage the employee to be open and frank about any issues they may be experiencing and discuss with them the best way forward.



- During the informal guidance review meeting, further opportunities for improvement should be explored and careful consideration given to determining acceptable standards. These should be agreed jointly.
- In addition, you should set some structure around how this will be achieved and when progress will be reviewed. Identify any training or support that may be needed for the employee to achieve any of the performance targets set during the meeting and to give them every opportunity to be successful in their outcomes following the meeting.
- Do be clear that if the employee is unable to achieve satisfactory levels of performance, this may result in the commencement of the formal Capability Procedure which could result in their dismissal.

[See appendix 1 for informal capability guidance meeting invitation letter](#)

[See appendix 4 for informal capability guidance meeting outcome letter](#)

## **10. STAGE 1 FORMAL CAPABILITY PROCESS**

- The formal capability process applies to employees where there are serious concerns about their performance. The formal capability procedure can be activated at any time during the year where serious concerns about performance arise.

**REMEMBER** there are **NO** circumstances under which termination of employment can be considered for poor work performance without following the procedure as set out in the Capability Policy and Procedure for Schools.

- If at any stage in the policy and procedure an employee disputes the basis on which the concerns over capability have been raised, an independent investigation should be carried out in order to ascertain the facts. The results of this should then be reported to the employee concerned.

### **10.1 STAGE 1 FORMAL CAPABILITY MEETING - Conducted by the Line Manager or equivalent.**

Where a decision has been made to convene a formal capability meeting, at least 5 working days' notice in writing will be given. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable an employee to prepare to answer the case at a formal capability meeting and will contain copies of any written evidence. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. This meeting is intended to establish the facts and will be conducted by the Line Manager or their equivalent.

## 10.2 Convening a Formal Capability Meeting

When convening a Formal Capability Meeting the Line Manager or their equivalent shall ensure that:

- They are confident that the appraisal and day-to-day management processes have been exhausted.
- Any manager who has been directly involved in events leading up to formal capability action should not be involved at this stage but may appear as a witness if appropriate.
- The employee has been given 5 working days' notice in writing of the date, time and place of the meeting.
- The employee has been issued with a copy of the Capability Policy and Procedure for Schools.
- The employee has been provided with copies of any notes of supervision meetings/or lesson observations where concerns have previously been highlighted with examples where their work has not met a satisfactory standard. This should be circulated in advance, usually at least 3 working days prior to the meeting.
- The employee understands the concerns about his/her performance
- The employee knows that they have the right to be accompanied by their trade union representative or work colleague.
- The employee understands that failure to attend without good reason could result in the Manager determining the issues in their absence
- Natural justice prevails throughout the proceedings through a fair and impartial meeting being conducted.

## 10.3 Conducting a Formal Capability Meeting

The meeting will be conducted as follows:

- The headteacher/manager should maintain a structure to the meeting, avoiding unnecessary formality but ensuring that any outcomes are reasonable and fair.
- Written evidence should normally be circulated in advance, usually at least 3 working days prior to the meeting. Subject to the headteacher/manager's agreement evidence may be presented on the day; in such circumstances an appropriate adjournment should be allowed to enable all parties to consider the material.

- A note taker should be present to make a record of proceedings. The School will need to arrange this. The notes should be typed up after the meeting and a copy retained on file and a further copy provided to the employee concerned.
- The headteacher/manager hears the evidence from the line manager and witnesses, and considers any written evidence in support of the case.
- The headteacher/manager allows the employee to present their case, to question the manager, call any witnesses and present any written evidence and mitigation in support of their case.
- It is the decision of the manager to determine that, in the absence of either the employee or their representative, they continue or that, after the line managers presentation is completed, they be sent a copy of the notes and any supporting material and asked to submit a statement in response. This could be done in writing if the employee remains unable or unwilling to attend.
- If the employee is unable or unwilling to attend but the representative is in attendance, a note signed by the employee must be presented to the manager which authorises him/her to act on their behalf.
- The headteacher/manager can adjourn the meeting at any time if it is thought necessary to obtain clarification or further information.
- The headteacher/manager will then, after careful consideration, (with use of an adjournment) determine if the concerns raised are confirmed (on the basis of fact) and therefore what actions should be considered.

#### 10.4 **Possible outcomes from the Formal Capability Meeting:**

The headteacher/manager conducting the meeting should confirm their decision in writing within 5 working days of the meeting. They may conclude that 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. In such cases the capability procedure will come to an end. In other cases, the meeting will continue. The person conducting the meeting will:

- Identify the professional shortcomings, for example which of the 8 Standards/Personal and Professional conduct expected of teachers are not being met;
- Adjourn the meeting if they decide that a further investigation is needed or that more time is needed to consider additional information;
- Where the manager suspects that there is an underlying medical reason causing or contributing to the work performance then the employee should be referred to the Occupational Health Service and the Capability meeting should be suspended until

the information is acquired.

- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives 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);
- Explain any support that will be available to help the employee improve their performance;
- Identify further guidance and/or training;
- Set out and agree with the employee a timetable for improvement during the monitoring and review period and explain how performance will be monitored and reviewed in a Performance Improvement Plan (PIP), see Appendix 2 & 3 for detailed guidance and pro forma.
- The length of the review period will normally be between 4 to 6 weeks for support staff; and between 4 to 10 weeks for teaching staff depending on individual circumstances. It is for the school 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
- The manager conducting the meeting shall confirm their decision in writing within 5 working days of the meeting or as soon as possible thereafter and confirm the employee's right to appeal against a formal warning within 10 working days of receipt of the outcome letter.

[See appendix 6 for stage 1 formal capability meeting outcome letter](#)

**In reaching their decision the headteacher/manager should consider:**

- Has the procedure been properly complied with?
- Has the headteacher/manager considered fully all explanations put to them by the employee?
- Are the headteacher/manager's concerns about performance justified?
- How does the employee's performance affect quality of service?
- Does the headteacher/manager have reasonable grounds to support the decision based on fact?
- Was the employee fully aware of the standards required?
- The employee's position, length of service, previous general performance?
- Any action applied by management in similar cases?
- Have any mitigating circumstances been properly considered?
- Are there any temporary problems that may be affecting the employee's performance (for example, personal issues outside work)?

- If the employee has a disability, have you taken all reasonable steps to make adjustments to the work or the way it is done?

Where the decision following the Formal Review Meeting is to issue a written or final written warning, the capability warning should be specific and leave the employee in no doubt about:

- What work performance has been found to be unacceptable?
- What the employee must do in the future?
- What the time-scales are for review – this may vary from case to case and is dependent upon the nature and complexity of the work and how long it takes to complete any training or other measures agreed? This does not have to reflect the timescale for any warning in place.
- The consequences of not heeding the warning – moving on to the next stage in the procedure which could lead to dismissal?
- Does the proposed decision fall within a band of reasonable responses by a reasonable employer?
- The length of time the warning will be considered as ‘live’?

**Written Warnings:** A record of the written warning should be kept on the employee’s file and normally regarded as ‘live’ for **12 months**. After this time has lapsed it will be disregarded in any future capability matters. However, where the same type of capability issue becomes a pattern, which is repeated every time a warning ceases to be live, previous warnings may be taken into account. It should warn that failure to improve could result in a final written warning and advise the employee of their right to appeal.

**Final Written Warnings:** A record of the final warning should be kept on the employee’s file and normally regarded as ‘live’ for **12 months**. After this time has lapsed it will be disregarded in any future capability matters. However, where the same type of capability issue becomes a pattern, which is repeated every time a warning ceases to be live, previous warnings may be taken into account. The written warning should accurately reflect the warning given at the meeting and should warn the employee that dismissal will result if there is no satisfactory improvement and advise the employee of their right to appeal.

**REMEMBER** the formal capability action imposed is determined by the seriousness of the concern.

## 10.5 MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING

**- Conducted by the Line Manager or equivalent.**

The employee's performance shall be monitored to assess their performance standards confirmed in the Performance Improvement Plan ([Appendix 2 & 3](#)).

**FORMAL REVIEW MEETING – Conducted by the headteacher/Manager or equivalent.**

Invitation to attend a Formal Review Meeting: The headteacher/Manager or their equivalent shall ensure the employee has been given 5 working days' notice in writing of the date, time and place of the Formal Review Meeting and that they have been provided with copies of any documentation to be referred to during the meeting. The Formal Review Meeting should follow the same path as Section 10 above.

- If the level of performance has been satisfactory the Capability Policy and Procedure for Schools can end here with a letter from the manager to confirm this in writing. However, if there is a shortfall in the employee's performance again within the warning period, the manager can resurrect the process at the appropriate stage.
- However, if the employee fails to reach the standard of performance expected, the manager does not need to wait until the expiry of the review or warning period to take action. If it continues to be an issue of capability then extend the review period or move on to the next stage.
- The manager may take into account unexpired warnings for different work performance issues, as taken together they add up to an overall profile of the employee. In some exceptional circumstances expired warnings may have some relevance and can be considered where it is shown that the employee maintains satisfactory performance until the warning is no longer active.
- In these circumstances the manager may present this evidence when responding to the employee's statement of mitigation.

## **11 STAGE 2 FORMAL CAPABILITY PROCESS**

### **11.1 MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING – RESULTING IN A FINAL WRITTEN WARNING - Conducted by a Senior Manager or equivalent.**

Please refer to the process outlined in section 10.

[See appendix 7 for stage 2 formal capability meeting invitation letter](#)

[See appendix 8 for stage 2 formal capability meeting outcome letter](#)

### **11.2 FORMAL REVIEW MEETING – Conducted by Senior Manager or Head Teacher**

Please refer to the process at stage 10.5.

## 12 STAGE 3 FORMAL CAPABILITY PROCESS

### 12.1 STAGE 3 FORMAL CAPABILITY MEETING – Conducted by Staff Dismissal Committee.

Please refer to the process in section 10.

[See appendix 9 for stage 3 formal capability meeting invitation letter](#)

As an alternative to dismissal, the governing body could consider the following:

- Redeployment to another post within the school – if this is at a lower grade there will be no salary protection. Redeployment is dependent on a suitable alternative post being available and this may be in competition with others.
- Demotion within the same job - this may be appropriate where the employee has a history of successfully working at a lower grade. There will be no salary protection on demotion.

[See appendix 10 for stage 2 formal capability meeting outcome letter](#)

## 13 APPEAL PROCESS

An appeal may be raised on one or more of the following grounds, using the appeal form ([appendix 11](#)):

- **Procedure** – failure to follow procedure has had a material effect on the decision
- **Decision** – the evidence did not support the conclusion of the hearing officer
- **Warning** – too severe given the circumstances of the case
- **Alternative action** – should (or should not) have been considered.
- The employee should send their letter of appeal to the person and address confirmed in the decision letter within **10 working days of receipt**.
- Appeals made against written and final warnings will be heard by the Warning Appeal Committee comprising of 2 governors.
- An appeal against a dismissal will be heard by the Staff Dismissal Appeal Committee (comprising 3 Governors) and will be a full hearing where both parties will have an opportunity to present their case. The Committee will usually consist of Governors officially delegated to perform the hearing. No Governor previously involved in any

appeal can be considered sufficiently impartial to be a member of the Staff Dismissal Appeal Committee. If there are not sufficient governors available, the appeal may be heard by 2 governors – but there should be no fewer than the number that made the initial decision.

- An advisor from HR should advise the committee, but they are not a member of the committee.
- The outcomes from appeals at any stage are:
  - To uphold the sanction
  - To overturn the sanction or
  - To impose a lesser sanction
- In cases of dismissal the employee will be removed from the payroll. However, if the appeal is successful and the employee is reinstated, then a full reimbursement of remuneration will be made, i.e. a return to the financial position as if the dismissal never happened.
- Any decision at the appeal stage is pursued on the basis of fact (not balance of probability) and so the committee should expect sufficient factual information at the appeal to justify the decision. It is likely the appeal will focus more on matters of procedure and the level of action. Consideration should be given to how reasonable or unreasonable the original decision was i.e. did the evidence support the conclusion reached?
- The confirmation of the Warning Appeal Committee's decision in respect of outcomes should be given on the day or within 5 working days of the hearing or as soon as possible thereafter. If these time-scales cannot be complied with then every effort must be made to keep the employee informed of any likely delay. The employee should be told that there is no further appeal within this Capability Policy and Procedure against this decision.

[See appendix 12 for appeal acknowledgement letter](#)

[See appendix 13 for appeal hearing invitation letter](#)

[See appendix 14 for appeal hearing outcome letter](#)

For further information on how to manage performance, please refer to the ACAS website <http://www.acas.org.uk>.