



HAILEY HALL SCHOOL

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**CAPABILITY POLICY
& PROCEDURE**

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Responsible person: Operations Manager

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1. Introduction and scope

This policy applies to employees of the School. It does not apply to Early Career Teachers (ECTs) or employees in their probationary period in respect of which there are alternative policies in place.

This policy does not form part of any employees' contract of employment and it may be amended at any time.

This capability policy provides a framework for resolving issues where an employee's performance has fallen below the accepted level for the role. The focus is to address issues and see an improvement in the employee's performance, however, the policy also covers the process to follow when performance does not improve.

Concerns raised about performance, as well as support and advice given at all stages, should be well documented.

At every formal stage in the procedure, the employee will:

- be advised in writing of the nature of the performance concerns
- have the right to be accompanied by their accredited trade union / professional association representative or work colleague
- be given five working days' notice of any formal meeting
- have a right of appeal against any warning given.

This Policy is supplemented by the Capability Procedure, which gives further detail on each stage of the capability process, including the informal management period.

2. Legislation and guidance

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

This policy also complies with our funding agreement and articles of association.

3. Misconduct

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases the disciplinary policy should be used rather than the capability policy.

4. Roles and responsibilities

Where the member of staff subject to the procedure is the Headteacher, the Chair of Trustees will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the Headteacher, the Headteacher, or a nominated member of senior staff, will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

5. Right to be accompanied

An employee has the right to be accompanied and supported at each formal stage of the procedure, by a work colleague or an accredited professional association / trade union representative.

The employee should provide the name of their representative within two working days of the meeting. Where the chosen companion is unavailable on the day scheduled for the meeting, the employee may request that the meeting be rescheduled to an alternative time that is reasonable and within five working days of the scheduled date.

If the employee is unable to attend a meeting within five working days, the meeting may take place in a timeframe at the School's discretion. If the representative remains unavailable, the employee may be asked to choose another representative.

During the meeting the companion may put the employee's case forward and confer with the employee. However, they may not answer questions on the employee's behalf or make any representations if the employee indicates they do not wish this.

6. Informal management period

An informal period of support, put in place and monitored by the line manager, will be put in place **before** formal capability procedures are triggered. Evidence of this will be available before the formal process begins.

7. Formal stages in the process

There are up to three formal stages in the capability process as follows, which can be concluded after stage 1 or 2, where appropriate.

- **Stage 1 – formal capability meeting**
- **Stage 2 – formal capability meeting**
- **Stage 3 – formal capability meeting (dismissal stage)**

An Appeal may be raised after any stage, should an employee wish to appeal against the outcome of a warning or dismissal.

8. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Board of Trustees to quality assure the operation and effectiveness of the system.

9. Consistency of treatment and fairness

The Board of Trustees is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The Board of Trustees is aware of the guidance and provisions of the Equality Act 2010.

10. Monitoring arrangements

The effectiveness of this policy will be monitored by the Headteacher and Board of Trustees.

This policy will be reviewed every year but can be revised as needed.

This policy will be approved by Board of Trustees

11. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Teachers' appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives
- The Capability Procedure

THE CAPABILITY PROCEDURE

1. Informal management period

Before embarking on the formal capability policy, management will check that through normal performance appraisal and management supervision:

- the employee has been alerted to concerns
- the employee is clear on agreed expectation of standards of performance
- a performance improvement plan (PIP) has been set with support and a timescale for review
- a copy of this policy has been given to the employee.

Where performance concerns have not been successfully addressed, an assessment will be undertaken to decide if there are grounds for taking formal action under this policy, including review of any records relating to the employees work performance. If it is determined that formal action should be taken a formal capability meeting will be arranged, as follows.

2. Stage 1 – formal capability meeting

The employee will be invited in writing to attend a formal capability meeting. The employee will be informed that the appraisal process is suspended and will no longer apply whilst the employee's performance is being managed under the capability policy.

The employee must make every effort to attend formal meetings and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so (for example health reasons) a formal meeting will be convened in their absence and the decision taken based on the available evidence.

The meeting is intended to establish the facts. At this meeting the manager will:

- identify the performance concerns, the support already given as part of the appraisal policy, the standards required and where the shortfall in their performance has occurred
- provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards)
- consider and discuss any causes and reasons for the shortfall including any reasons why the measures taken so far have not led to improvement. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance and / or refute the evidence presented if appropriate
- after reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the manager will decide whether:
 - to move into a further period of monitoring without issuing a warning
 - to issue a first written warning
 - to issue a final written warning (serious cases only).

At which point the following will also apply:

- set a PIP and targets for the future standard of performance with agreed objectives set out showing clearly how these will be achieved and measured
- identify the support to be provided to assist the employee in reaching the required PIP (e.g. additional supervision, coaching, observing exemplar lessons). The

employee should also be invited to suggest what support that they feel they may benefit from

- 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 should usually be four to six weeks or half a term. 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 significant improvement to take place
- notes must be taken of the meeting.

If, following response from the employee, it is accepted that it is not appropriate to proceed with the formal capability process; the matter could be addressed via performance appraisal or relevant management support. Otherwise, the decision and reasons for it will be put in writing.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the stage 1 formal capability meeting. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken
- that substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 2 capability meeting (or stage 3 if a final written warning has been issued).

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

3. Stage 2 – formal capability meeting

The formal meeting allows the employee to respond to the assessment that their performance has failed to improve and to explain the failure. The stage 2 meeting may also be instigated if there is further evidence of poor performance during the period of monitoring following the first written warning.

The meeting will cover:

- the areas in which the employee has not met the required performance standards set out in the PIP and previous warning
- any relevant documents including minutes from Stage 1 formal meeting.

Outcome of the stage 2 formal capability meeting

There are three possible outcomes to the stage 2 meeting:

- Sufficient improvement, in which case the capability policy will cease and the appraisal process will resume
- There has been some improvement, and there is confidence that more is likely, but further support or monitoring is required and the monitoring, review period and PIP will be extended
- If no, or insufficient improvement has been made, the employee will receive either a first written warning if one wasn't issued at the commencement of the formal capability meeting, or a final written warning if a first writing warning has already been issued.

The decision will be confirmed in writing.

Monitoring and review period following stage 2 capability meeting

A performance monitoring and review period will follow the stage 1 formal capability meeting. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken
- that substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 3 capability meeting.

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

4. Stage 3 – formal capability meeting (dismissal stage)

Where dismissal is a possible outcome, a panel of three appropriate individuals will normally hear the case. Where this is impracticable, or would cause unreasonable delays, a panel of two individuals may hear the case.

If the case concerns the Headteacher, a panel of trustees would hear the case.

Copies of all relevant documents will be sent by the School to the panel members before the meeting.

At any meeting where dismissal is to be considered, the School may invite a HR Adviser from their HR Service.

Dismissal on the grounds of capability shall be with notice.

The outcome will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

5. Appeals

An employee may appeal against a warning or dismissal at any stage within seven calendar days specifying the grounds of appeal.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose the original sanction.

The appeal hearing may be a complete rehearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed, and any new information that may have come to light. This will be at the School's discretion depending on the circumstances of the case.

The decision of an appeal panel at each stage will be final. The outcome will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

6. Duration of warnings

In circumstances where a written or final written warning is issued, it will be placed on the employee's personnel file normally for a period of twelve months, unless the employee is notified

to the contrary. After the active period the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future capability proceedings.

If an employee is subject to the formal capability policy or has a live warning in place at the time of a reference request, this must be referred to in any employment reference.

There may be occasions when an expired warning cannot be disregarded, such as where the performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where such a pattern emerges, an employee's record of previous warnings will be borne in mind in deciding how long any new warning will last, or whether it is appropriate to undertake disciplinary action instead, on the basis that the employee has been able to previously demonstrate that capability is not in question.

7. Disputes about the policy

Where there is evidence of poor performance there will be no access to the grievance or bullying and harassment policies for matters related to the application of the capability policy.

Where issues arise relating to this policy, for example identified support has not been provided; they should be raised during the monitoring period and / or at any subsequent formal meeting or appeal process.

Appendix 1: Capability Action Plan Template

This template can be used as part of the process of supporting a staff member who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Name of staff member	Name of Appraiser	Date of meeting

Objective 1:		
Detail of objective	Success criteria	Evidence to be used to assess progress
Support / resources to be provided	Monitoring arrangements	Review date

Objective 2:

Detail of objective

Success criteria

Evidence to be used to assess progress

Support / resources to be provided

Monitoring arrangements

Review date

Objective 3:

Detail of objective

Success criteria

Evidence to be used to assess progress

Support / resources to be provided	Monitoring arrangements	Review date

Other support provided

Mentor / coach allocated	Yes / No (If yes give name)
Counselling to be provided	Yes / No
Occupational health referral to be made	Yes / No
[Insert any other support provided]	
Formal review date	

Signed by member of staff	Signed by appraiser	Date