



IMBERHORNE SCHOOL

Policy Document

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Capability Policy	
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Prepared by:	Matthew Whatford
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Policy based on:	West Sussex Model Capability Policy 2024 (West Sussex Services for Schools)
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Aim

The aim of this policy is to provide a framework for managing employees, who despite the help and support provided through the Appraisal Policy/regular feedback meetings are unable to demonstrate the required level of performance or behaviours in their role.

Scope

This policy covers all staff employed by the school and Centrally Employed Teachers with the exception of:

- Apprentice Teachers or other centrally employed trainee teachers.
- ECTs.
- Those employed for less than one term.
- Support staff in their probationary period.

Certain procedural variations apply to the Head teacher and Centrally Employed Teachers as detailed below.

Head teachers

Any meetings addressing the capability of the Headteacher will be conducted/chaired by a member of the Governing Body who may be supported by a senior colleague from the WSCC Learning Service representing the Director of Learning.

When to use the Capability policy

Early intervention is critical when dealing with poor performance. The Line Manager, after consulting with their SLT link and the Head teacher is expected to raise concerns with individuals about their performance, through feedback, at the earliest possible opportunity and to put in place supportive interventions to help support the employee reach the required standards/behaviours. This is particularly important where a teacher appears to be on course to not meet agreed targets/expectations at their mid-year or end of year appraisal or where there is a pattern or concerns being raised.

For support staff it is recognised that they will not be subject to the same appraisal process as teachers but the same expectations for managing their performance exist and should be managed accordingly.

The Capability Policy will be instigated when, despite the help and supportive interventions provided through the Appraisal Policy/ normal regular feedback meetings, the employee is still unable to meet the required standards and has **been formally notified that the Appraisal Policy/normal regular feedback meetings will no longer apply.**

The Capability Policy may also be instigated when there are serious concerns about an employee's performance and immediate action is warranted.

Only the Head teacher can instigate the formal Capability Procedure, after discussions with the line manager and SLT link with regards to the above, but the management of the process may be passed to another appropriate member of the Senior Leadership Team.

As per the Pay Policy, the employee will not be eligible for pay progression whilst they are subject to the Capability Procedure.

In cases where the employee does not reach and maintain the required standard of performance, the employee may be dismissed.

If the required standard is not met for reasons of misconduct (e.g. refusal to co-operate or follow instructions) then this will be treated as a disciplinary matter under the Disciplinary Policy.

If the reason for poor performance is as a direct consequence of an underlying health condition or disability, this will be managed through the Sickness Absence Policy. Sickness absence will also be managed through the Sickness Absence Policy.

This policy must be read in conjunction with the guidance notes. It was amended to complement the revisions to the School Appraisal and Pay Policies in the light of the changes to the STPCD from September 2013.

Right to be accompanied

Employees have the right to be accompanied at all formal meetings within the procedure. There is no right for the employee to be accompanied to regular meetings during review periods.

The employee's companion can be:

- a work colleague,
- a Trade Union Official or
- an accredited Trade Union Representative.

If the employee is attending a dismissal appeal meeting, the employee may bring a legal representative as their companion, for example a solicitor.

The name and role of the companion attending any formal meeting should be notified to the Head teacher/Line Manager, no later than 3 working days prior to the formal meeting.

The Formal Procedure

Prior to commencing the formal procedure the employee will have been **notified in writing that their performance is to be managed under the formal capability policy and that the appraisal policy no longer applies.**

For a detailed outline of the procedure and additional information please refer to the Guidance notes.

The formal procedure consists of three stages:

Stage	Purpose.	Outcomes	Meeting Chaired by
Stage 1 - Formal Meeting	To formally discuss the shortfall in the employee's performance and make clear the required standards, set objectives and timescales for improvement.	Written notice to improve OR No action is necessary and returns to normal appraisal policy/normal regular feedback.	Headteacher/Ap pointed member of SLT/SLT Line Manager
Stage 2 - Formal Review Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide the next steps.	Final Written notice to improve. OR Extended monitoring period is given OR Employee has improved and formal capability procedures are discontinued and returns to appraisal policy/ normal regular feedback.	Headteacher/Ap pointed member of SLT/SLT Line Manager
Stage 3 - Final Review and Decision Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide on the appropriateness of continuing the employee's employment.	Dismissal with notice. OR Employee has improved and formal capability procedures are discontinued.	Head Teacher/panel of no fewer than 3 governors.

These would normally be followed sequentially, however there are certain circumstances where it would be appropriate to initiate the capability policy at a later stage, this includes:

- Where a notice of improvement is still 'active' and the employees' performance lapses during this period; OR
- Where there is a significant or sudden drop in performance that jeopardises the education of children, their safety or significantly compromises the operations, functions and services provided by the school.

In cases where it is not clear where the procedure should commence, advice will be sought from the HR Professional Support team.

Notice of meetings

Where possible the date of the Formal Review meeting and Final review meeting should be set in advance, but in any case, at least 5 working days written notice should be given of attendance at any formal meeting under the procedure.

The notice of the meeting must contain sufficient information about the concerns, and their possible consequences, to enable the employee to prepare their response.

Postponements

A postponement may be requested in advance of the meeting and providing the reasons for the request are reasonable this will be agreed to. Only one postponement will be allowed.

In the event that the employee fails to attend the meeting or chooses not to attend the meeting, the matter may be considered and decided in their absence.

Document Exchange

Any documentation to be considered at any formal meeting must be sent to the employee with the invitation to attend the meeting.

If the employee wishes to submit documentation to be considered this should be submitted no later than 3 working days prior to the meeting.

Witnesses

In certain circumstances it may be appropriate for the Headteacher/appointed SLT member/SLT Line Manager or the employee to call witnesses to attend the hearing. Where this is the case, the Headteacher/appointed SLT member/SLT Line Manager shall notify the names of the witnesses they intend to call in the invitation to attend the meeting. Where the employee wishes to call their own witness the name of the witnesses should be notified in writing no later than 3 days before the meeting.

Formal confirmation of decisions

The formal decision of the meeting and a copy of the notes of the meeting must be confirmed in writing to the employee within 5 working days of the meeting being held (see below for special provisions relating to dismissal).

Monitoring Periods

The length of a monitoring period depends on the seriousness of the issue, but is expected in most cases, to be between 4 to 8 weeks per monitoring period, with the aim of completing the procedure within a term of commencing the process.

Currency of Notice To Improve

If, at the end of their monitoring period, the employee has achieved the required standard, formal capability procedures will be discontinued and the employee will return to the normal appraisal process. The employee should be notified formally in writing of this.

However, the notice to improve will remain 'live' for a period of 9 calendar months (written notice to improve) or 12 calendar months (final notice to improve) or to the end of the academic year (whichever is the greater period) commencing from the date of the meeting, which confirms that formal procedures no longer apply.

Should the employee's performance lapse during this period they will return to the Capability procedure at the stage they left it.

Link to Pay Progression

Whilst an employee is subject to the Capability Procedure they are not eligible for pay progression under the School Pay Policy.

However, an employee may be considered for pay progression (even if his/her notice to improve is still "live") if he/she has reached the required targets and his/her performance has been assessed as having met their targets by his/her Appraiser, provided that the Appraiser is satisfied that the improvement in performance is sustained and warrants progression up the pay spine.

Dismissal

Final Review and Decision Meetings (Stage 3), where dismissal may be the outcome must be conducted in accordance with the procedure outlined in Appendix A of the Guidance Document.

In Community, Voluntary Controlled, Community Special and Maintained Nursery Schools, the decision to dismiss is delegated to the Headteacher and Governing Body, but must be confirmed by the Local Authority.

Where an employee is dismissed from such a school, they will be formally notified within 5 working days of the Headteacher/Governing Body's recommendation. This will be followed by a formal notice of dismissal from the Local Authority within 14 days of receipt of the recommendation for dismissal.

Appeals

There is the right of appeal at all stages of the formal Capability policy.

In the case of dismissal, the employee has the right to appeal against any such dismissal to a Panel of no fewer than three Governors representing the Governing Body of the School.

Employees wishing to appeal against a notice to improve or dismissal must submit their appeal in writing, stating the grounds for their appeal, with 5 working days of receiving written confirmation of the decision to the Clerk to the Governing Body.

The Clerk to the Governing Body will make arrangements for the appeal meeting to be held within 10 working days of receiving the employee's letter.

The Appeal Panel cannot increase the level of the notice to improve.

Detailed information outlining the Formal Capability Procedure

Stage 1 - Formal Capability Meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of the Governing Body (for headteacher capability meetings) or headteacher/other suitable senior member of the school's staff (for other employees e.g., teachers or members of the Support Staff).

The meeting sets out the required standards which are believed to have been failed by the employee. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations, with the option of being accompanied by a work colleague, union representative or an official employed by a trade union.

This may provide new information or a different context to the information/evidence already collected. During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary.

The employee shall be allowed to ask questions, present their own evidence, and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.

The person conducting the meeting 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.

The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Identify the employee's professional shortcomings (for example, for teachers which of the standards expected are not being met).
- 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; set out the timetable for improvement taking into account the employee's personal circumstances. This may include any medical conditions, working pattern, wellbeing support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case but in straightforward cases could be 12 weeks.
- Explain how performance will be monitored and reviewed, typically this will be fortnightly. Warn the employee formally that failure to improve within the set period could ultimately lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring And Review Period

A performance monitoring and review period will follow the Formal Capability Meeting (Stage 1). Formal monitoring, evaluation, guidance, and support will continue during this period. The employee will be invited to a Formal Review Meeting (Stage 2), unless they have already been issued with a final written warning, in which case they will be invited to a Decision Meeting (Stage 3).

Stage 2 - Formal Review Meeting

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (for example a date that is within five working days of the original proposed date).

If the person conducting the meeting 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 receive a final written warning which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards.

As before, notes will be taken of formal meetings and a copy sent to the employee.

The final written warning wording will mirror any previous warnings that have been issued. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

Stage 3 – Final Review and Decision Meeting

As with formal capability meetings and formal review meetings, at least five working days' 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 accompanied by a work colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start.

If performance remains unsatisfactory, a decision (if in regard to a teacher or member of the Support Staff), or recommendation to the Governing Body (in regards to a headteacher), will be made that the final written warning should be extended (where possible or appropriate), or the employee should be dismissed or required to cease working at the school. Redeployment into an alternative role may be considered where appropriate and possible.

Note: Before a decision to dismiss is made, the school will discuss the matter with the Local Authority. For maintained schools the Local Authority may attend and offer advice at all proceedings relating to the dismissal of any employee, and the Governing Body must consider any such advice.

The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Decision To Dismiss

The power to dismiss employees in this school has been delegated to the Headteacher and one or more governors acting with the Headteacher.

Dismissal

Once the Headteacher and one or more governors has decided that the employee should no longer work at the school, it will notify the Local Authority in writing of its decision and the reasons for it. Where employees work solely at this school, the Local Authority must dismiss them with notice within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school".

General Provisions

Overlapping Procedures

In certain circumstances an employee may have a difficulty that is covered by two policies (for example, Grievance); or another difficulty arises during the application of one policy (e.g. sickness absence). In these circumstances the meetings required could be combined to ensure that the issue is dealt with in its entirety rather than viewed in isolation. The aim should be to focus on resolving the difficulty, ensuring that the essential elements from each procedure have been included in order to minimise the number of meetings and correspondence.

Sickness absence or Grievances will not necessarily mean the Capability Policy is suspended, each individual case will be examined on its merits and timescales may be amended accordingly.

HR Professional Support can provide advice in these circumstances.

Link with Incremental Pay (Non-Teaching staff only)

The pay policy states that employees will usually progress to the next spinal column point on an annual basis, subject to their performance, until they reach the top of the pay spine. If an employee is given a notice to improve, their Line Manager may authorise for the employee's increment to be withheld until the notice to improve has lapsed. If this is to be actioned, the employee will be told in writing.

Trade Union Representatives

No formal action will be taken under this policy against an accredited representative of a trade union, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

Employees with Disabilities

If an employee requires any reasonable adjustments to be made to enable them to fully participate in the process, they should notify their Head teacher/Line Manager as soon as possible.

In the case of any formal meeting, any reasonable adjustments should be notified as soon as possible (and providing a minimum 3 working days' notice). See the Guidance notes for further information.

General Principles Underlying This Policy

ACAS Code of Practice on Disciplinary and Grievance Procedures. The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Governing Body to quality-assure the operation and effectiveness of the appraisal system. This may be delegated to the member of SLT responsible for the Appraisal Policy and process, who will check and quality assure a sample of appraisal records to check consistency of approach. SLT line managers will also ensure that all appraisals are completed within the departments and teams they manage.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Governing Body is aware of the guidance on the Equality Act 2010 issued by the Department for Education. References "If a teacher has been subject to formal capability procedures in the previous two years", as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and employment advice for schools, "this must be disclosed to new potential school employers when requested".

Definitions

Unless indicated otherwise, all references to "teacher" include the headteacher. This policy document refers to employees of the school which encompasses teachers, the headteacher, members of the school's leadership team/group, and support staff. This policy document also refers to 'the Governing Body' and 'governors', some schools may use 'governing board'. Academies may use the term 'trustees'.

Delegation

Normal rules apply in respect of the delegation of functions by Governing Bodies, headteachers and local authorities.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, including as part of the capability process, it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy (e.g. referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with

monitoring or formal procedures). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The Governing Body and headteacher will monitor the operation and effectiveness of the school's Capability Policy. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

Retention

The Governing Body and headteacher will ensure that all written capability records are retained and stored in a secure place.

Appendix A – Capability policy

Procedures for the Governing Body

Rules of Conduct for a Dismissal Hearing and Appeal

Each governing body should have a procedure to deal with the consideration of dismissals. It is suggested that the Rules of Conduct of Dismissal Hearings set out here should form the basis of this, subject to the following amendments:

- a. At **least** 5 clear working days' written notice shall be given to the employee of the date, time and place of the dismissal or the appeal hearing advising of his/her right to be represented. The notice calling the employee to the capability hearing shall include a statement of any allegation, complaint or adverse report concerning the employee's conduct or capacity which is to be considered.
- b. The concerns about the employee's capability will be presented by a person approved by the governing body/Headteacher (depending on whether or not the authority to dismiss has been delegated to the Headteacher), and this may be, for instance, the Headteacher or deputy Headteacher, or a member of the HR Management Advice team or Legal Services Unit.
- c. The Headteacher or panel of governors may be advised by a Legal representative, the school's HR Advisor or HR Business Partner from the Local Authority as a representative of the Director of Learning. That person may retire with the panel for the purpose of giving advice (they do not, however, have any role in making the decision).
- d. Persons presenting evidence shall not retire with the panel of governors when it considers its decision, but the panel may recall anyone to clarify evidence previously given, provided that the two parties are also in attendance when that evidence is given.

e. At the conclusion of the hearing, if it is considered that dismissal should take effect the employee will be informed orally if possible and in any event the decision will be confirmed in writing within 5 working days.

f. In Community, Community Special, Voluntary Controlled and Maintained Nursery Schools, the Local Authority is required to give notice of contract termination within 14 days following receipt of confirmation from the school. Termination shall be in accordance with the notice required in the contract of employment.

g. In the case of an appeal, the employee shall set out in writing the grounds for the appeal, to be lodged with the clerk to the governing body within 5 working days of receipt of written confirmation of the dismissal.

h. The panel hearing the appeal may uphold the original capability decision, or modify it, by substituting a lower level of capability action or dismiss the concern(s) altogether. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment. Once the decision has been reached, it should be given orally at the hearing if possible and confirmed in writing to the employee within five working days.

Conducting a Dismissal Meeting (Including Appeal Meetings)

a. Copies of this Procedure will be held in every school and be freely available to all employees.

b. Those involved in capability proceedings need to be fair, impartial and reasonable throughout.

c. The following rules of conduct shall apply to all formal dismissal meetings including appeal meetings under this Procedure.

d. A governor is ineligible to serve on a capability dismissal committee where he/she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident or involved in a matter, which results in capability proceedings.

e. Where a panel of governors is required to determine an appeal against action short of dismissal or a determination relating to the dismissal of a member of staff or any appeal against such a determination, that committee or panel will include no fewer than three governors and no governor who has had prior involvement in the case shall consider an appeal against that decision. The membership of an appeal committee shall include no fewer members than the committee whose decision is the subject of appeal (where this is relevant).

f. Meetings will be held at a time and place, which, as far as possible, are acceptable to all parties. A meeting should be adjourned to another date after 5 hours or at 6 p.m.; whichever is the earlier, unless both parties agree otherwise.

g. Copies of all documentary evidence will be available to both parties as early as possible in advance of the meeting.

h. Accommodation will be provided for the employee and his or her representative or work colleague to meet in private before, during and after the meeting.

i. The Headteacher/senior officers, any governor(s), and the employee and his or her representative will attend throughout the meeting. Witnesses will be present only for their submission to the meeting (if appropriate to the case).

j. During the meeting, the Headteacher/senior officer or the employee, may request one or more short adjournments. Such requests will not be unreasonably refused.

k. Witnesses will be instructed not to discuss their evidence with other witnesses during the meeting.

l. The Chair of the Panel/Headteacher should start the proceedings by introducing himself/herself and others present to the employee, explaining the role of each of those present. The employee should introduce any person who is accompanying him/her. The Chair of the Panel/Headteacher should then establish with both parties the names of any witnesses they intend to call to the meeting.

m. The Headteacher/senior officer or presenting officer will first present the concerns(s) against the employee/Headteacher, as appropriate, providing such evidence, documentary or by oral statements of witnesses, as necessary.

n. The employee or his/her representative will then be asked to give an explanation of the circumstances which led to the convening of the capability meeting, providing such evidence, documentary or by oral statements of witnesses, as appropriate.

o. All witnesses may be questioned by the Headteacher/senior officer, the employee or his/her representative, any governor and the representative of the Authority (if present) immediately following their submission to the meeting. The Headteacher/senior officer (in situations where the Headteacher is presenting the case) or presenting officer and the employee may be similarly questioned. Following the completion of both parties' submissions, witnesses may be recalled - but only to clarify evidence previously given, not to introduce any new material.

p. The Headteacher/senior officers or presenting officer and the employee or his or her representative may sum up following the conclusion of statements by both parties. The employee will be given the opportunity to speak last. Neither summary may introduce any new material.

q. The Headteacher or chair of the meeting, having given the employee the opportunity to state his/her case, may adjourn the meeting for further investigations before a decision is made.

r. At the conclusion of the meeting, all those present except the panel and adviser should leave the room to allow them to deliberate in private. The Headteacher/chair may recall the Headteacher/senior officer or presenting officer and the employee/representative, to clarify points of uncertainty on evidence already given. If recall is necessary, both parties must return even if only one is concerned with the point giving rise to doubt.

In coming to a conclusion on the facts of the case, the panel will need to decide based on the evidence presented whether the employee's employment should be terminated. Once a determination has been reached, both parties should be recalled to the meeting. The Headteacher/Chair should inform the employee of the determination and right of appeal. In exceptional circumstances, it may not be possible to reach a decision on the day of the meeting. In this case, both parties should be recalled to the meeting and so advised. The Headteacher/Chair should explain the reasons and inform the employee when the determination is likely to be reached. This must be no later than two working days after the meeting.