Capability Policy

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Our school vision.

Hethersett VC Primary School empowers its children and their families to flourish and grow. Creativity, compassion, responsibility, the love of learning to gain knowledge and wisdom, combined with Christian values shape our inclusive education.
Together we are stronger, respecting ourselves and others to create a successful and healthy future.
Keep your roots deep in him, build your lives on him, and become stronger in your faith, as you were taught. And be filled with thanksgiving. Colossians 2:7

Capability procedure – support staff P329c
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We, the Governing Board, have adopted this procedure.

1. Introduction and scope

1.1 This procedure reflects the ACAS Code of Practice on disciplinary and grievance procedures. It applies to all support staff employees other than where an exemption applies (see paragraph 4).

1.2 This procedure details the formal capability procedure only. The *Appraisal policy and procedure – support staff P324* incorporates information regarding structured, informal support, where there are performance concerns. This procedure will only be initiated where that structured support has failed or the concerns are more serious. *Capability guidance – support staff G329* provides guidance for following this procedure.

2. Equalities and support

2.1 The Headteacher will ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

2.2 Through the implementation of this procedure, the Governing Board will be mindful of their obligation to seek to maintain and protect the mental health and wellbeing of all employees as far as is reasonably practicable.

2.3 According to ACAS it is estimated one in seven people are neurodivergent, meaning that the brain functions, learns and processes information uniquely. Where an employee discloses neurodiversity, the Governing Board understands the employee may require extra support in relation to the application of this procedure. Where reasonable adjustments are necessary and can be accommodated, the Headteacher will support these.

2.4 Throughout this procedure reference to companion means trade union representative or work colleague and through the formal procedure, the right exists for the employee to be supported in that way. Where an employee discloses a mental health issue which could be a disability, efforts will be made to seek to agree with the employee and reasonable adjustments to the procedure. This could include allowing the employee to be supported by an individual who does not meet the statutory definition of a companion but does understand the individual's condition and its effects, and/or; having regular breaks during longer grievance meetings, and/or; holding the meeting at a neutral venue.

2.5 We expect all employees to adhere to this policy in line with the obligations under equality legislation.

3. Authority to act

Strategy consideration –

Under the School Staffing (England) Regulations 2009, the Governing Board may delegate responsibility for dismissal of employees to the Headteacher, one or more governors, or one or more governors acting together with the Headteacher. Although the authority to dismiss can be delegated to the Headteacher, they are primarily responsible for taking employees through the process until a decision on dismissal has to be made. It would therefore not be appropriate for the Headteacher to also make the decision regarding dismissal in capability cases. Schools are advised against delegating dismissal decisions to individual governors.

In Foundation schools, Voluntary Aided Schools and Foundation Special Schools the Governing Board is the employer but the power to dismiss can be delegated to the Headteacher, to one or more governors or to one or more governors acting with the Headteacher.

In Community, Voluntary controlled, Community Special or Maintained Nursery schools, the power to determine that the employee should no longer work at the school can be delegated in the same way as above, but it is the Local Authority, as the employer, that actually dismisses staff. The Local Authority will do this within fourteen days of the date of the notification.

Clarity on delegation of the power to dismiss on grounds of lack of capability will need to exist before this formal procedure commences.

3.1 The Governing Board have taken the decision to delegate responsibility for dismissal of employees to the Headteacher.

3.2 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

4. Exclusions

4.1 Disciplinary procedures exist to deal with misconduct, wilfully deficient performance, refusal to follow instructions, negligence, and other similar situations, and will be used where such considerations form a significant part of any complaint.

4.2 The assessment and treatment of employees undergoing an induction or probationary period will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

4.3 Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

5. Covert recordings

5.1 The Governing Board believes that the covert recordings (audio and video) of workplace meetings undermines trust between individuals.

5.2 The covert recording of any meetings or proceedings, including disciplinary and grievance hearings and appeals, by an employee potentially constitutes an act of gross misconduct. It features in the list of non-exhaustive acts of gross misconduct in the guidelines on conduct document. Without sufficient mitigation, the covert recording by an employee of colleagues in such a meeting may lead to the employee's summary dismissal.

5.3 Affected employees will be informed of this policy position before any disciplinary, grievance or capability meeting.

5.4 Similarly, no covert recording of the deliberations of a panel at the end of any hearing may be made. This would also potentially constitute an act of gross misconduct likely to lead to summary dismissal.

5.5 In some circumstances, it may be appropriate for a meeting to be recorded but in these cases, there must be written agreement between the manager leading the discussion and the affected employee. Consent will need to be obtained by all persons who will be included in the recording. The parties will then be under an obligation to ensure that all recordings are processed, securely stored and used in a manner consistent with the Data Protection Act 2018.

6. Formal Capability Meeting

Strategy consideration – the formal capability meeting should only be used if an appraisal system is in place which contains a process for structured informal support and that system has not been successful in bringing about improvement.

The meeting initiates the capability procedure. It provides an opportunity to deal with more serious problems in a structured way or to give more intensive support and monitoring where support provided as part of the appraisal process has failed to bring about the required improvement. It allows the employee to prepare a response to allegations about performance and make a case in the company of a companion.

6.1 Invitation for the Formal Capability Meeting

The employee should be invited to the meeting with at least five working days' notice (or seven consecutive days out of term time). The invitation should be in writing, making clear the purpose of the meeting, confirming the date, time and venue, and giving details of others who will be in attendance (e.g. witnesses, HR Consultant). The right of the employee to be accompanied by a companion must be included.

Where the employee has notified management that they will be accompanied by a companion, the companion will be consulted on the date and time of the meeting, although the process should not be unduly delayed by the accessibility of the companion. The statutory guidance suggests that the process should not be delayed by more than five days for the purposes of securing representation but there should be recognition of the difficulties associated with co-ordinating diaries.

A copy of this capability procedure will be included with the invitation, along with a capability report prepared by the employee's line manager, usually the appraiser (where an appraisal system is in place). The report must include:

- a description of the problem(s),
- information about action already taken (where appropriate),
- reference to, and copies of, other evidence being used to confirm problems, e.g. monitoring reports.

The invitation will be handed to the employee by the Headteacher or posted by recorded delivery. An extra copy of the invitation, report and other documentation will be provided to the employee for the purposes of passing to their companion. By agreement with the employee, the copy may be posted direct to their companion.

6.2 Conducting the Formal Capability Meeting

The meeting will be chaired by the Headteacher.

The format of the meeting will normally be as follows:

- The Headteacher introduces those present and confirms the purpose of the meeting.
- The line manager outlines the review report and highlights the reasons and evidence for concerns, calling witnesses where appropriate. Written evidence from witnesses should be provided to the employee in advance of the meeting.
- The employee (and/or their companion) may ask questions of the line manager and any witnesses.
- The Headteacher and their adviser may ask questions.
- The employee (and/or their companion) will present their case and will be able to refer to written evidence and/or call on witnesses of their own. Prior notice must be given of any witnesses called or referred to, and any written evidence circulated before the review meeting.
- The line manager, the Headteacher and their adviser can ask questions.
- Where appropriate, the line manager and employee (and/or companion) may summarise their cases.
- The Headteacher will adjourn the meeting while they decide what action to take. The employee and their companion must be informed as soon as possible, and no later than five days after the review meeting. Normally, information will be given after the adjournment.

The meeting may provide new information or put a different slant on evidence already collected. If it becomes clear that further investigation is needed the meeting should be adjourned for an appropriate length of time to allow this to happen.

6.3 Outcome of the Formal Capability Meeting

There are four possible outcomes from a formal capability meeting:

1. **The matter may be dropped** – this is only where new information, a different slant on the information collected or further investigation suggests the matter is not as serious as it first seemed.

2. **Structured support** - counselling/informal coaching (except where already undertaken within the appraisal process without improvement). This is only where new information, a different slant on the information collected or further investigation suggests the matter is not as serious as it first seemed.

3. **Oral or first written warning**

4. **Final written warning**

The third and fourth options are relevant in any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the level of seriousness of the problem:

- An **oral warning** should not normally be necessary in cases where counselling has already taken place.
- If performance is unsatisfactory a **first written warning** will normally be the appropriate step (which will invoke an assessment period of up to ten weeks).
- In cases of particularly serious concern, perhaps where the finances or security of the school are in jeopardy, it is possible to move directly to a **final written warning** (which will invoke an assessment period not normally exceeding four weeks). In these extreme cases it will be important to consider (before a decision is made about issuing a final warning) how the employee's performance has dipped significantly if, for example, they have recently passed a probationary period or had a successful appraisal assessment (if an appraisal scheme is in place).

Any decision on the level of warning should be made after all the facts and any representations from the employee (and/or companion) have been considered. The Headteacher will adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.

Where a formal warning is issued, the Headteacher will use the remainder of the meeting to agree an action plan to:

- identify the professional shortcomings,
- give clear guidance on the improved standard of performance needed to end the capability procedure,
- explain the support that will be available, and how performance will be monitored over the following weeks and that it will end in an evaluation meeting,

- depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting,
- make it clearly understood that failure to improve may ultimately lead to dismissal.

A letter, along with the agreed action plan, will be sent to the employee immediately after the meeting, recording the outcome, the main points discussed, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage and the appeals process. The letter will state that if there is insufficient improvement in the capabilities of the employee by the end of the stated period, this could lead to further action under the formal procedure including dismissal for lack of capability.

Any appeal against a warning must be submitted within five working days (or seven consecutive days out of term time), and ideally heard within ten working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered. This appeal will be heard by an Appeal Committee.

6.4 Appeals against warnings

Any appeal submitted by an employee regarding a first written warning or final written warning will normally be heard by the Appeal Committee. The Appeal Committee should consist of three governors although this can be reduced to a minimum of two where a Governing Board has a shortage of eligible governors.

Notice of at least five working days (or seven consecutive days out of term time) must be given for an Appeal Committee hearing.

The Disciplinary, Dismissal and Appeal Committee hearings procedure should be followed for appeal hearings.

Strategy consideration - The *Disciplinary, Dismissal and Appeal Committee hearings procedure P303b* is available on InfoSpace.

The outcome of the Appeal Committee hearing must be confirmed in writing to the employee within five working days.

6.5 First assessment stage

Weeks one to ten (up to ten weeks, no less than four) – Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee. This will include the need for regular, perhaps weekly, feedback to the employee on their progress so they can be clear on whether they are making the improvements required. It would be helpful to the process if such regular feedback is through a written note detailing where improvement has been made, and where progress still needs to be made.

This timescale is not prescriptive. It will depend on the role and the tasks required. For some groups of staff ten weeks may be too long. An assessment period could be anywhere from four to ten weeks, it will be for the Headteacher to decide what the most appropriate timescale would be.

If at any point during this stage the circumstances suggest that a more serious problem exists, the Headteacher may take the decision to bring forward the planned evaluation meeting to consider whether a final written warning should be issued sooner. If a final warning is given following such a brought forward evaluation meeting, there will normally be a maximum period of four weeks allowed following that meeting before a final evaluation meeting is held.

Week 10 (up to ten no less than four) – Evaluation meeting

The purpose of this meeting is to assess performance over the previous weeks. The evaluation meeting should be convened by the Headteacher by circulating, at least five working days (or seven consecutive days out of term time) in advance, a summary report which contains:

- the original target setting letter,
- details of help and guidance provided and results of monitoring,
- copies of evidence from observations and other relevant evidence,
- a clear assessment by the Headteacher of the progress made,

If it is found that the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure can end with a confirmation letter from the Headteacher. Within a reasonable timeframe, if the employee's performance becomes unsatisfactory again (in the same way that it was before), the employee would re-enter this procedure at the point where they left it, i.e. consideration as to whether a final written warning is issued (see below).

If it is found that performance continues to be unsatisfactory, a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support will continue for a further (four week) period. Arrangements for this should be explained at the meeting. The decision and main points of the meeting must be recorded in a letter to the employee. The employee must be told clearly that failure to achieve an acceptable standard by the final evaluation meeting and decision meeting (second assessment stage), with confidence that it can be sustained, may result in dismissal. Any appeal against the final written warning must be made within five working days (or seven consecutive days out of term time), and ideally heard within ten working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

6.6 Second assessment stage

Weeks 10 – 14 (up to 10 –14, no less than 4 – 8) Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

Week 14 (up to 14, no less than 8) – **Final evaluation and decision meeting** to report the assessment of performance over the previous weeks.

The final evaluation meeting should be convened by the Headteacher, where the Headteacher has authority to dismiss, by circulating, at least five working days (or seven consecutive days out of term time) in advance, details of the time and place of the meeting and will advise the employee of the right to be accompanied by a companion. A summary report will also be sent which contains:

- the original target setting letter,
- details of help and guidance provided and results of monitoring,
- copies of evidence from observations and other relevant evidence,
- a clear assessment by the Headteacher of the progress made,

The invitation to a final evaluation and decision meeting should make it clear who will be in attendance and who has the authority to dismiss. It is expected that in most cases, authority to dismiss has been delegated to the Headteacher who would conduct the meeting and make the decision about dismissal. The final evaluation and decision meeting (where the Headteacher has authority to dismiss) will follow the same format as the formal capability meeting (paragraph 6).

If it is found that performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here. Within a reasonable timeframe, if the employee's performance becomes unsatisfactory again (in the same way that it was before), the employee would re-enter this procedure at the point where they left it i.e. consideration as to whether the employee will be dismissed.

If performance remains unsatisfactory, a decision will be made that the employee should be dismissed or required to cease working at the school. 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.

Note: If authority to dismiss has not been delegated, the Headteacher will conduct the final evaluation meeting and then make a recommendation to the Staff Dismissal Committee. A decision meeting is then conducted before a Staff Dismissal Committee, comprising of three governors (or two where there is a shortage of eligible governors). The procedure for a capability hearing, *Disciplinary, Dismissal and Appeal Committee hearings procedure P303b*, should be followed.

7. Dismissal Appeal stage

If the employee appeals the decision of the Headteacher or the Staff Dismissal Committee, the Governing Board should set up a Dismissal Appeal committee to hear the appeal.

The paperwork referred to in 6.1 should also be provided when calling an appeal hearing along with a copy of the outcome statement from the decision meeting/Staff Dismissal Committee hearing. Again, the employee should be given five working days' notice along with confirmation of their right to be accompanied by a companion.

A copy of the information sent to the employee should be passed to each member of the Appeal Committee and their adviser in advance of the hearing.

The appeal committee should consist of three governors (different to those used on the Staff Dismissal Committee, where this was used). This can be reduced to two where a school has a shortage of eligible governors. The same number of governors should be on the appeal panel as where on the Staff Dismissal Committee, where this was used.

The outcome of the hearing must be confirmed in writing to the employee within five working days. If the Appeal Committee confirms dismissal, the employee has no further right of appeal.

8. Post dismissal actions

Where the capability of an individual is such that it may make them unsuitable to work with children, a referral to the Disclosure Barring Service (DBS) may be appropriate. The HR provider supporting the school through the dismissal process will give appropriate advice. There is currently no requirement to make referrals to any other agencies where a member of support staff is dismissed for lack of capability.

9. Data Protection

Personal data collected and processed for the purpose of this procedure will be handled in accordance with the data protection policy and applicable statutory obligations. Any personal data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of employee management or to comply with statutory reporting obligations. Inappropriate access to, or disclosure of, employee data constitutes a data breach and should be reported without delay, in accordance with the data protection policy. It may also constitute a disciplinary offence in which case it would be dealt with under the disciplinary policy and procedure.

1. Appendix 1 – Table of changes

Date of change	Paragraphs affected	Summary of update
24/10/2024	All	Review of whole document and terminology to ensure consistency across all policies and procedures.
13/03/2023	All	Review of whole document and addition of exclusions paragraph and equality of access and opportunity paragraph
29/11/2021	Introduction and scope	Additional paragraphs to include consideration for employees with mental health issues.
01/12/2020	2	Addition of section on covert recordings.
27/11/2018		Updated to remove any references to academies as there is now a stand-alone academy capability model procedure for support staff.
17/05/2018	6	New para added to take account of the General data protection regulations in force from 25 May 2018.
24/08/2017	All	New document created for schools and academies, with appraisal systems in place, to provide a procedure more aligned with the teacher capability procedure. Essentially this has removed the informal stage of capability and put this within the appraisal process and also shortened the procedural capability process timescales to make it manageable and realistic. The policy and procedural advice remains largely the same as before.
22/01/2018	3.13, 3.14	Document title change, “Disciplinary, Dismissal and Appeal Committee hearings procedure P303b”