Capability guidance - teaching staff G329a 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

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1. Introduction

1.1 This guidance links to and supports the *Capability procedure – teaching staff (P329b for schools and P329e for MAT's)*. The guidance and procedure together provide a fair and efficient process which is in line with good employment practice.

1.2 Support staff capability is covered separately under *Capability procedure - support staff (P329c for schools and P329d for MAT's)* and *Capability guidance - support staff G329*.

1.3 It is important to distinguish between conduct and capability:

- **Conduct** is about behaviour which is often, but not always, deliberate but is usually within the employee's control. Concerns around conduct should be dealt with under *Discipline model procedure P303* and accompanying guidance.

- Problems with **capability** will relate to cases where an employee is unable to achieve the level of competence expected because of lack of knowledge/skills and abilities. These **capability** issues should be dealt with through this guidance and the procedure *(P329b for schools and P329e for MAT's)*.

In some cases, an employee's ability to carry out their role effectively may be impaired by other factors such as health, working relations or private circumstances. The procedure allows for such circumstances to be taken into account. When an employee's ability to carry out the requirements of their post is in question because of an identified underlying medical condition, the relevant parts of the *Absence management policy and procedure P313* should be followed.

1.4 Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance reviews will help avoid the need for formal capability procedures. In some cases, an improvement may be achieved informally with minimum support and attention. In others a more formal approach will be necessary.

1.5 Governing boards and Trusts must, by law, have procedures for dealing with lack of capability in employees. *Capability procedure – teaching staff P329b* is based on the outline capability procedure drawn up in 1997 by a national working group of teacher, employer, governor and church representatives chaired by the Advisory, Conciliation and Arbitration Service (ACAS) but with amendments taking into account the Teacher Appraisal Regulations 2012. It is consistent with the ACAS Code of Practice on disciplinary matters.

1.6 Case law has determined that at all stages of a formal process, including dismissal, the decision maker should have an awareness of the facts relating to the immediate issues and to any potentially related issues (e.g. a grievance or protected disclosure made by the employee) to ensure any decisions taken are directly related to the immediate issues and not partly or fully resulting from those related issues.

2. Responsibilities

2.1 The procedure and this guidance should be considered in conjunction with current legislation, particularly the School Staffing Regulations 2009 and the Teacher Appraisal Regulations 2012.

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

2.3 Where an employee discloses a mental health issue which could be a disability, efforts will be made to seek agreement with the employee on any 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 their condition and its effects, and/or; having regular breaks during longer grievance meetings, and/or; holding the meeting at a neutral venue.

2.4 Any governing board committee set up as part of the governing board's normal processes, the Chair of Governors, a nominated individual governor and the Headteacher, can each have delegated authority for different aspects of the process. It is advised that responsibilities are distributed as follows:

Action	Procedure against employee	Procedure against Headteacher
Support and monitoring	Headteacher	Chair of Governors and/or other nominated governor(s) supported by Director of Children's Services
First or final warning	Headteacher	Personnel Committee
Appeals against warnings	Appeal Committee	Appeal Committee
Dismissal	Staff Dismissal Committee*	Staff Dismissal Committee
Appeals against dismissal	Dismissal Appeal Committee	Dismissal Appeal Committee

2.5 The Governing Board should determine and formally record where responsibility will lie. They may do this annually or on a case by case basis.

2.6 Schools (not academies): The Director of Children's Services (or their representative) has the right to attend meetings at which a dismissal decision may result (including appeals against dismissal).

2.7 Norfolk County Council expects Community schools to adopt *Capability model procedure - teaching staff P329b*. Voluntary Controlled and Voluntary Aided Schools may seek the advice of the appropriate Church Authority at any stage. Voluntary Aided schools have the right to adopt lack of capability procedures as advised by the appropriate Church Authority. Foundation schools are advised to adopt the model procedure.

2.8 Academies may adopt the *Capability model procedure – teaching staff MAT's P329e* or adapt it before adopting it or create one of their own.

3. The role of governors

3.1 Governors should not normally be involved with the capability procedure before the dismissal stage. The exceptions to this are where a governor or governors are involved in considering an appeal against a warning or in a capability procedure against the Headteacher when some governors may be involved in the monitoring and evaluation of performance.

3.2 It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal committee and no fewer for the appeal. Normally a panel would consist of three governors but where this number is not reasonably practicable it can be reduced to two.

4. The role of advisers

4.1 Advice may be taken from Local Authority advisers or other advisers with specialist experience. This advice may relate to the process itself or to the provision of support and/or monitoring, including classroom observation. Other specialist staff may be involved where appropriate, for example Advanced Skills Teachers.

4.2 A Headteacher would normally take HR support in applying the capability procedure (except where the Headteacher is the focus of the process). If concerns have not been resolved through low level action or through more formal support within the Appraisal model *policy – teaching staff P324a*, advice should be sought early on from the HR provider to ensure the capability procedure is applied appropriately.

4.3 When the Headteacher is the focus of the capability procedure, the Chair of Governors or other nominated individual governor should refer to the additional guidance given in Appendix C (to follow) to *Capability procedure – teaching staff P329b*.

5. Representation at formal interview, evaluation meetings and the dismissal hearing

5.1 An employee has a statutory right to be accompanied by a representative (i.e. a union representative or work colleague) at formal meetings. If the employee's chosen representative is not available at the time proposed for the interview, meeting or hearing,

and the employee proposes an alternative date that is reasonable and falls within five working days of the proposed day, the school should rearrange the event to the time proposed by the employee. This would of course be conditional upon the availability of the Headteacher and other individuals who need to be present (e.g. HR Consultant). Where the identity of the representative is known, consultation over suitable dates can prove helpful to avoiding delays.

6. Notice

6.1 Notice of five working days (or seven consecutive days out of term time) must be given for the formal capability interview. The date of successive evaluation meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged.

6.2 Notice of at least five working days (or seven consecutive days out of term time) must be given for a staff dismissal committee or dismissal appeal hearing. Meetings, interviews and hearings should not take place outside of term time.

7. Support for the employee

7.1 Those monitoring performance should offer feedback and instruction to help the employee improve. If training courses or assistance from colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure. Clearly, if support is identified as being necessary to bring about improvement, it needs to be provided early on in the process so that sufficient time is allowed to realise the benefits of that intervention.

7.2 Examples of help to meet targets when providing structured support include:

- pastoral support from an appropriate employee
- counselling by senior colleague or Norfolk Support Line
- job coaching
- observations of good practice elsewhere
- observation and advice by other colleagues, advisers or Advanced Skills Teachers
- issue of notes or examples of work for guidance
- relevant INSET
- attachment of a mentor within the school.

7.3 Evidence of all support must be collated so notes of observations and meetings can inform the next review meeting.

8. Monitoring arrangements

8.1 Monitoring should cover a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

8.2 Examples of the ways progress can be monitored include:

- planned observations of teaching by Headteacher or other nominated employee with, normally, written feedback within two days. The number of observations should be proportionate to the extent of the performance issues.
- reviewing samples of pupils' work
- regular meetings to review documentation and review lessons.

9. Written records

9.1 A written record should be made of all interviews with the employee and any action taken. Formal warnings should be disregarded (ie no longer remain "live") when the employee has demonstrated satisfactory performance for the specified period (six months for an oral or written warning and one year for a final written warning).

10. Employees who are absent through illness during the procedure

10.1 Urgent action should be taken if long-term absence intervenes during a capability procedure. If long-term absence appears to be linked to the action being taken to address the employee's poor performance, the case should be referred immediately to occupational health (via the HR provider) to assess the employee's health and fitness for continued employment. The school must take a considerate and sympathetic approach but, in general, the length of time they may wait for the employee's health to improve before considering whether to terminate employment on health grounds should take into account occupational health guidance and HR advice.

10.2 Steps should be taken to enable the employee to attend evaluation meetings, but where the employee is unable to attend, these may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances, the employee should be invited to make a written submission and a full account of the evaluation should be provided in the letter confirming the decision taken.

10.3 Short term absences should not delay any part of the formal stage of the capability procedure.

11. Decisions on continuing the procedure and recommending dismissal

11.1 The decision to continue a capability procedure or recommend dismissal should be taken by the Headteacher but advice should be taken from the HR provider and the views of appropriate others involved in the process (e.g. the employee's line manager) should be considered.

11.2 Dismissal and any appeal hearings must be arranged in accordance with current legislation and statutory guidance. The current legislative requirements are covered by the model procedures and these guidance notes.

12. Timetable

12.1 References to school terms throughout this guidance and the model procedure are taken to mean normal school term lengths for schools that operate a three term academic year. Should any school operate on more than the normal three terms in an academic year, an approximate pro rata adjustment to any references to school terms should be made.

13. Confidentiality

13.1 The general principle is that capability procedures are confidential and all parties involved should respect this. However, on rare occasions, a formal meeting or a potential dismissal situation can lead to media enquiries. Where this is the case, Headteachers or governors should seek advice from the HR provider and the County Council's Media and Communications team.

13.2 Records must be kept no longer than necessary and in compliance with the Data Protection Act 2018.

14. Disputes about the procedure

14.1 Any disagreements about the interpretation of the procedure, or the application of any related matters not covered in it, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

15. Appeals against formal warnings

15.1 Appeals must be heard by a panel of governors/trustees. Appeal panels should always be composed of an odd number of members to allow a majority vote to take place. Measures should be taken to ensure that those included in the decision-making panel are independent and not a risk of making bias decisions or creating a perception of bias. Involvement in hearing appeals against warnings does not necessarily mean that a governor/trustee is tainted and thereby ineligible to serve on a dismissal or dismissal appeal committee.

15.2 Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities.

15.3 An employee is entitled to be accompanied at an appeal hearing by a representative.

15.4 The appeal decision should be confirmed in writing and the employee told there is no further appeal against the decision.

15.5 Where the reasonableness of the decision is being challenged, the question to be answered is whether the decision to apply the particular sanction was, in the view of the Appeal Committee, soundly based. If the Appeal Committee finds that the decision was not soundly based, they have the option of overturning the decision but would need to state how their determination should impact on the capability procedure being followed.

15.6 Where an appeal is upheld the matter should be referred back to the Headteacher to be reconsidered or for further appropriate action.

15.7 Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

16. Grievances

16.1 In exceptional circumstances an employee may raise a grievance about the behaviour of the Headteacher or other manager during the course of a capability procedure.

16.2 Depending on the circumstances it may be appropriate to suspend the capability procedure until the grievance can be considered. Such a delay should only be

considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another manager to deal with the capability case (e.g. Deputy Headteacher). Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.

17. Appendix 1 – Table of changes

Date of change	Paragraphs affected	Summary of update
01/04/2025	All	Review of whole document and terminology to ensure consistency across all policies and procedures.
19/08/2020	6.1	Notice period for capability hearings reverted to 5 days as it was previously changed in error.
15/06/2020	1.5, 6.1, 8.2, 9.1, 13.2, 15.1	Amended to include 10-day notice period for capability hearings as well as the need for decision makers to have an awareness of the facts surrounding the proceedings. Amended the time periods for which written warnings can remain 'live' and that appeals panels for warnings should be constituted of an odd number of members.
01/03/2017	All	New formatting due to launch of new HR website, HR InfoSpace – no change to content.