

Capability Policy

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1. Informal Stage

- 1.1. If an appraiser identifies through the appraisal process, or via other sources of information, that the difficulties experienced by a teacher are such that, if not rectified, could lead to capability procedures the appraiser, the Headteacher, or a member of the leadership team, will, as part of the appraisal process meet the teacher under Section 9 (teacher experiencing difficulties) of the Appraisal Policy.
- 1.2. Support staff will be subject to the informal process below.
- 1.3. Once the facts are gathered and the seriousness of the problem established there are three initial options:
 - Drop the matter (no case to answer or trivial);
 - Arrange counselling (management support without using the formal procedure);
 - Arrange a formal interview (formal approach for more serious cases).

COUNSELLING

- 1.4. Counselling and informal coaching should aim to encourage and help the employee to improve. It should be conducted discreetly. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer. The employee must be told what is required, how performance will be reviewed, the review period and that the formal procedure will commence if there is no improvement. Counselling should not go on too long. A brief note of any counselling should be kept for reference.
- 1.5. Discussion must not harass the member of staff or turn into a formal interview. If more serious concerns arise, or the employee expresses discontent or indifference to the counselling, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.
- 1.6. After a period of review involving observation and assessment, a firm conclusion should be reached. The options are:
 - drop the matter;
 - convene a formal interview.

2. Formal Stage

Formal Interview

- 2.1. The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious or persistent problems in a structured way. It allows the employee to prepare a response to allegations about performance and make a case in the company of a union representative or colleague. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the interview.
- 2.2. The interview may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed, the interview

should be adjourned for an appropriate length of time to allow this to happen.

2.3. Consideration should be given as to who should carry out the interview, as if the case progresses to a dismissal hearing, a Headteacher who has been directly involved in the procedures cannot hear the dismissal.

2.4 There are four options for the outcome of a formal interview:

- drop the matter;
- counselling (except where already undertaken without improvement),

These two options above are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed.

- oral or written warning;
- final written warning.

These two options above are relevant to 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 seriousness of the problem.

2.5 A decision should be made after all the facts and any representations from the employee have been considered. The Headteacher or line manager should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.

2.6 If performance is unsatisfactory, a written warning will normally be the next step and will invoke a monitoring review period of 4-10 weeks. An oral warning should not normally be necessary in cases where counselling has already taken place. In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to move directly to a final written warning. This will invoke a monitoring period not exceeding 10 weeks except in exceptional circumstances.

2.7 Where a formal warning is issued, the Headteacher or manager should use the remainder of the meeting 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;
- depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
- make it clearly understood that failure to improve may lead to dismissal.

2.8 A letter should be sent to the employee immediately after the formal interview recording the result of the investigations, the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage and the right of appeal.

- 2.9 Any appeal against a warning must be made within 5 working days (or 7 consecutive days out of term time) and should be heard within 10 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.

First Monitoring Review Period

- 2.10 Regular observation, monitoring and evaluation of performance with guidance, training if necessary, and support to the employee. If at any point during this stage the circumstances suggest a more serious problem, a decision may be taken to move directly to a final written warning.
- 2.11 At the end of the monitoring period a Formal Review meeting to assess performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the meeting and the employee may be accompanied by a union representative or colleague. If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure can end here with a letter from the line manager.
- 2.12 If performance continues to be unsatisfactory, a final written warning should be issued. Formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The employee must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the employee.
- 2.13 Any appeal against a final written warning must be made within 5 working days (or 7 consecutive days out of term time), and should be heard within 10 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.

Second Formal Review Period

- 2.14. Regular monitoring and evaluation of performance should be provided over a 4-week period, with guidance, training if necessary and support to the employee.
- 2.15. Final evaluation meeting to report the assessment performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the meeting and the employee may be accompanied by a union representative or colleague. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here. If performance is unsatisfactory the employee should be told that the matter will be referred to a dismissal hearing. The result of the assessment, main points of the meeting and date of the dismissal hearing (if known), should be recorded in a letter to the employee.

Dismissal Stage

- 2.16 The Headteacher can hear a case for dismissal, but where they have been directly involved in disciplinary procedures leading to dismissal, the governing body should

set up a committee with at least three governors. The regulations permit the panel to be at least two governors. The hearing officer/body must consider the representations and recommendations brought by the line manager conducting the capability evaluation and any representations that the employee may wish to make.

- 2.17 The governing body should set up a committee to hear any appeal against a dismissal decision. None of the governors at the dismissal hearing (if applicable) should hear the appeal.
- 2.18 The procedure to be followed at the dismissal and appeal hearings will be those set out in the Disciplinary Policy and Procedure.

3. Policy Status and Review

The Board of Trustees has agreed to this Policy and, as such, it applies to all Schools within the Trust. Please note that should any further national guidance be issued by external agencies that are relevant to this policy, it will be updated accordingly prior to the review date shown below and re-circulated.

Date approved: **September 2019**
Review date: **September 2021**

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Chair of the Board of Trustees

4. Appendices

Appendix 1 Good HR Principles

Ask Boleyn Trust HR for template

Appendix 2 Record of Informal Meeting under the Capability Procedure (Support Staff Only)

Ask Boleyn Trust HR for template

Appendix 3A Letter of invitation to a formal review meeting (Teacher)

Ask Boleyn Trust HR for template

Appendix 3b Letter of Invitation to a Formal Review Meeting (Support Staff)

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Appendix 4 Warning Letter – First Stage

Ask Boleyn Trust HR for template

Appendix 5 Letter to Act Sooner than at the end of a Formal Review Period

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Appendix 6 Letter of reminder regarding Formal Review Meeting at end of First Monitoring Period

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Appendix 7 Outcome of Headteachers Consideration – Well Done

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Appendix 8 Outcome of Headteacher’s Consideration – Final Written Letter

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Appendix 9 Letter of reminder regarding evaluation meeting at end of second Formal Monitoring Period

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Appendix 10 Letter of improved performance – warning letter remains effective

Ask Boleyn Trust HR for template

Appendix 11 Letter referring case to Governors

Ask Boleyn Trust HR for template

Appendix 12 Summary Flowchart – Capability Procedure

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Appendix 13 Possible Timescales for Dismissal on Grounds of Incapacity

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Appendix 14 Management Guidance on the Capability Procedures

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