

**Model Capability Policy for
Teachers and Support Staff in Schools**

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1. Introduction

- 1.1 Schools and local authorities must stay within the legal framework set out in relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).
- 1.2 This Model Policy has been designed for use with all employees in the School including Teachers, Head Teacher, Non-Teaching and Support Staff. Schools may choose to adopt this or another policy, according to Governing Body decision.
- 1.3 This policy does not form part of any employee's contract of employment and it may be amended at any time by the Governing Body (or local authority in the case of unattached teachers) following consultation with recognised Trade Unions.

2. Policy Sign Off

- 2.1 The Governing Body of Parkinson Lane CP School adopted this policy on 10/7/17.
- 2.2 The policy has been the subject of consultation with recognised Trade Unions.

3. Purpose

- 3.1 This policy sets out the framework for managing performance issues which may arise from the Schools' Performance Management process.
- 3.2 Any employee subject to this policy must have been informally made aware of the concerns previously through the Performance Management Process including 1-1's, Supervision or Appraisal meetings.
- 3.3 Every effort to resolve the concerns informally must have been made prior to implementing this policy.
- 3.4 The Manager should ensure they have appropriate up to date recorded documentation, that was shared with the employee, evidencing previous informal discussions with the employee around concerns and are ready to present to the employee the support they will make available to assist them in achieving the levels required.

4. Application of the Policy

- 4.1 The policy applies to all staff including the Head Teacher, Teachers and Support Staff employed by the School except those on temporary contracts of less than 13 weeks, those undergoing induction (ie NQT's) and Agency Workers.
- 4.2 Capability concerns arising as a result of ill-health should be addressed in accordance with the School's Attendance Management Policy. If it is not clear whether ill-health is affecting the employee's performance this should be clarified before implementing the Capability Policy.

- 4.3 This policy will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Head Teacher and/or Governing Body to quality assure the operation and effectiveness to this policy.
- 4.4 Misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations should be dealt with under the School's Disciplinary Policy.
- 4.4 The application of this policy is not intended to prevent or limit the normal good management practice of raising and discussing day to day concerns or issues with employees via supervision, 1:1's or other similar means.
- 4.5 Issues of Capability may arise as a result of lack of skill, aptitude or ability despite appropriate and relevant training. Concerns about an employee's capability may arise through a number of routes including:
- The Performance Management process where despite support and opportunities to improve informally, inadequate progress/improvement has taken place. In these circumstances the employee will be notified in writing that the Performance Management System will no longer apply and that the concerns will be managed under the Capability Policy.
 - Other routes including complaints, pupil progress, subject review or specific incidents.
- 4.6 The policy manager will ensure that all written records are retained in a secure place for six years and then destroyed.

5. Capability Procedure

The person managing the issues prior to this policy being implemented will usually continue to manage the case under the capability policy until any final stage where dismissal may be considered. This will be the Head Teacher, relevant Manager or Chair of Governors (for Head Teacher capability issues) – for clarity this will be referred to as the 'Manager' throughout this policy.

5.1 Formal Capability Meeting

- 5.1.1 Where the Manager identifies concerns about the capability of an employee they will invite them to a Formal Capability Meeting under this policy.
- 5.1.2 At least 5 working days' written notice will be given of a Formal Capability Meeting. The notification will contain sufficient information detailing the concerns about the performance to enable the employee to prepare to answer the concerns at the meeting. It will also contain copies of any written evidence; the details of the time and location of the meeting; and will advise the employee of their right to be accompanied by a trade union representative or work colleague.
- 5.1.3 The Formal Capability Meeting is intended to establish the facts and determine the appropriate course of action. The meeting allows the employee, accompanied by a trade union representative or work colleague if they wish, to respond to concerns

about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already shared.

5.1.4 Having considered information presented the Manager may decide:

- That any issues of concern may be managed outside the capability process through normal management/supervision/performance management processes.
- That a period of time to support improvement should be offered.

5.1.5 Where a period of time to support improvement is offered the following will be set out at the meeting and confirmed in writing:

- The shortcomings or concerns (eg standards, actions or outcomes not being met).
- Clear guidance on the improved standard of performance required to ensure the employee can be removed from the Capability Policy. This may include new targets focused on the specific concerns, other instructions or requirements and appropriate success criteria along with the evidence that will be used to assess whether or not the necessary improvement has been made.
- The timetable and action plan for improvement, identifying a specific review date and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case, and needs to be reasonable to enable opportunity for improvement to take place and to be demonstrated (a period of four working weeks to a half term is recommended as being reasonable).
- Confirm this as an improvement period of the Capability Procedure and explain that failure to improve within the set period could lead to a Formal Warning or Dismissal depending on the circumstances.
- A meeting will be arranged between all parties present in the time period agreed to review the situation.

5.1.6 **Formal Capability Review Meeting**

During the improvement period, performance monitoring and review should take place in accordance with the agreed plan for improvement. The Manager will consider the level of improvement and progress made during this time and will conclude at the review meeting and follow up in writing as follows:

- Where adequate progress/improvement has been made, and the capability concerns resolved, confirmation that the issues are resolved and the usual performance management process should apply should be confirmed, signing the employee off the Capability Procedure.
- Where some improvement has been made but it is not sufficient enough to sign the employee off the Capability Procedure an extension could be agreed.
- Where it is considered that insufficient improvement has taken place or further capability issues have arisen, the employee will be asked to attend a Formal Hearing to consider a dismissal on the grounds of capability.

5.2 Formal Hearing to Consider Dismissal on Capability Grounds

5.2.1 A formal hearing will be arranged in line with the decision making delegations set out in Paragraph 6 at which dismissal on the grounds of capability will be considered, or alternatively that the employee should either no longer work at the School or in the current role. Where the decision making body is the Governing Body, this will usually be a Staffing Committee of three governors (staff governors should not take part in these hearings or appeals).

5.2.2 The employee will be given at least five working days' notice of the Hearing to enable representation to be arranged should they choose.

5.2.3 The case will be put by the person managing the Capability process. The employee, supported by their trade union representative or colleague, will have the opportunity to respond.

The Staffing Committee or Head Teacher may determine one of the following outcomes:

- The employee has adequately improved and should, therefore, withdraw from the procedure.
- That a Formal Warning be issued and the matter be referred back to the person managing the process to review, with any recommendation for further action and/or support.
- That the employee be dismissed on a date which will normally equate to the standard notice period.
- With the employees' consent that the employee be redeployed into a lesser role should one be available.

5.2.4 Where redeployment is an outcome, the offer will be made in writing outlining the timescale in which redeployment should be achieved, the salary on offer and the consequences of refusal. Sufficient time will be given to the employee to consider any offer. If the offer is to a lower graded post then payment of salary appropriate to the new role will be immediate on appointment and pay protection will not apply.

5.2.5 In circumstances where the employee is dismissed they will be informed within five working days of the reasons for the dismissal, the appropriate period of notice, the date on which their employment contract will end, and their right of appeal.

6. Decision to Dismiss

For Community, Voluntary Controlled, Community Special Schools

The power to decide that employees should no longer work at this School has been delegated to the Head Teacher, except where he/she managed the Capability Process in which case the decision sits with members of the Governing Body.

7. Dismissal

Once the Governing Body (or decision maker) has decided that the employee should no longer work at the School, the Local Authority will be informed of the decision and the reasons for it. Where an employee works solely at this school, the Local Authority must notify the employee of the dismissal 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 (Community, Voluntary Controlled and Community Special Schools only).

8. Appeals

- 8.1 If an employee feels that a decision to dismiss them, or other Formal Warnings issued within the Capability Procedure, are wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay where possible within 10 working days and at an agreed time and place. The same arrangements for notification and right to be accompanied by a trade union representative/official or colleague will apply.
- 8.2 Appeal against a Formal Warning will be heard by a member of the Senior Leadership Team.
- 8.3 Appeal against a Formal Warning against a Head Teacher will be to a Governor Appeal Committee.
- 8.4 Appeal against dismissal will be heard by a Governors' Appeal Committee. This will not include governors involved in the dismissal hearing (or any staff governor).
- 8.5 The employee will be informed in writing of the outcome of the appeal hearing within 5 working days of the hearing.

In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body 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, and Maintained Nursery schools, the power to determine that the member of staff 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.

9. Head Teachers

Head Teachers capability issues will be managed by the Chair of Governors. The Chair of Governors is advised to contact the Local Authority for technical support on issues.

10. Employees Under Probation and Fixed Term Contracts

- 10.1 When an employee cannot achieve the required standard of performance or technical competence within the first six months of employment this should be managed in line with their probationary period.

10.2 Employees on fixed term contracts, who have been employed beyond six months, should be managed in line with any permanent employee as appropriate.

Signed Chair of Governors

Date