

Wilden V. A. Primary School

A Church of England School



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Our School Vision

The mustard seed, the smallest of all seeds, yet when it grows, it is the largest of garden plants and becomes a tree, so that the birds come and perch in its branches.

Matthew: 13, v 32

In partnership with parents, governors, St Nicholas Church and community, we strive to ensure all children are embraced and nurtured. Our creative curriculum teaches our children to be generous, loving, resilient, inquisitive and courageous; enabling them to flourish as they journey through God's ever changing garden of life.

STAFF CAPABILITY PROCEDURE – 2020

CAPABILITY PROCEDURE FOR TEACHERS AND SCHOOL SUPPORT STAFF

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CAPABILITY PROCEDURE

1. PURPOSE

- 1.1. This procedure is designed to help and encourage all employees within schools with delegated budgets to achieve and maintain an acceptable standard of performance.
- 1.2. This procedure provides a fair and consistent method of dealing with alleged failures to achieve the expected standard.
- 1.3. Lack of capability is defined as a situation in which an employee fails to perform his or her duties to a professionally acceptable standard. The required standard should be appropriate to the level of the job and the skills and experience reasonably expected of an individual in that position. Head teachers as managers will need to ensure that each member of staff has the ability, knowledge, guidance and support to perform his/her job to an adequate standard and in accordance with his/her job description.
- 1.4. The Head teacher will decide whether to invoke the Capability Procedure in consultation with the employee's line manager or supervisor following an investigation of the performance problems. With regard to teaching staff it is possible that evidence from the appraisal process will inform the judgement about whether to suspend the appraisal procedure and move to the capability procedure.
- 1.5. In the case of long term absence, where the capability procedure has been invoked on the grounds of poor performance, the capability procedure on the grounds of ill health will run in parallel. Special provisions on dealing with absence including those relating to ill health are set out in a separate policy at Chapter 4, Section 6 of the Personnel Handbook.
- 1.6. The procedure is to be applied when an employee is unable to carry out the duties of his or her post because of lack of capability as assessed by reference to skill, competence, aptitude or any other physical or mental quality where the person is not wilfully underperforming. The evidence from appraisal review will be a key element in deciding when the capability procedure should be invoked.
- 1.7. For the purposes of this document Head teacher means, in the absence of the Head teacher, a person who is either a deputy Head teacher or another senior member of staff who has been nominated by the Head teacher.
- 1.8. **All members of staff subject to the capability procedure should be strongly advised to contact their trade union or professional association for advice.**

2. SCOPE OF THE PROCEDURE

- 2.1. The procedure applies to all school based staff with the exception of newly qualified teachers where the Head teacher may consider instigating a capability procedure at any stage before the end of the induction period. This may lead to dismissal before the end of the induction period and the induction procedure will continue in parallel with any capability procedure.

- 2.2. Advice on the application of the procedure is available from the HR Services Team. Head teachers who plan to initiate action under the policy are advised to consult the HR Services Team before proceeding. Concerns about performance in the NQT induction year should be raised in the first instance with the appropriate School Improvement Adviser as well as with the HR Services Team. NQTs should also be advised to contact their professional association.

3. **PRINCIPLES**

- 3.1. The employee will be given the opportunity to explain his/her view of his/her performance at all stages of the procedure.
- 3.2. The employee has the right to be accompanied by a trade union/professional association representative or work colleague (the employee chooses which) at all formal stages of this procedure. If the representative cannot attend on the proposed date the employee can suggest an alternative time and date so long as it is reasonable and is not more than five working days after the original date. The five working day time limit may be extended by mutual agreement.
- 3.3. Meetings associated with the procedure will be postponed once on the grounds of self-certified or medically certified illness. Subsequent arrangements will proceed in the absence of the employee if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the outcomes of the meeting will be provided to the employee and the employee's representatives.
- 3.4. If an employee fails to attend an arranged meeting for reasons that are outside his/her control and unforeseeable when the meeting was arranged the meeting will be rearranged in the first instance. If the reason for nonattendance was due to circumstances that the line manager judges were reasonably foreseeable or within the employee's control then the meeting will continue in the employee's absence.
- 3.5. The employee shall be given a minimum of five working days' notice (excluding bank holidays) together with any relevant documentation prior to any meetings associated with this procedure.
- 3.6. Normally the period given for improvement will be no more than two terms after entry into Stage 1 of the procedure (but see paragraphs 3.7 to 3.9 below).
- 3.7. In extreme cases where the requirements of the service do not permit any delay, where pupils education is jeopardised or where performance has seriously deteriorated, not more than four weeks will be given for the employee to demonstrate a satisfactory improvement from the date of the first formal written warning. In such cases it may also be deemed necessary to miss one or more stages of the capability procedure as appropriate. Head teachers will wish to seek the advice of the HR Services Team in such cases.

- 3.8. Wilful failure to comply with clear advice and instruction or negligence which involves a measure of personal blame and instances of lack of capability and misconduct together will be dealt with under the conduct procedures.
- 3.9. Where it appears that the employee has committed a single error and the actual or potential consequences of that error are so serious as to make it impossible to allow the employee to continue in employment the gross misconduct provisions of the Conduct Procedure will apply.
- 3.10. If performance does not improve sufficiently to meet the targets set, yet the Head teacher considers that there has, nonetheless, been a significant improvement, consideration can be given to extending the time allowed to reach the desired standard before moving onto the next stage of the process. Where the employee has failed to satisfy targets and/or performance standards set, consideration should be given to a different balance of duties or an alternative post. This will take place in consultation with the employee and can take place at any stage in the procedure.
- 3.11. If performance improves to the extent that this procedure is suspended but then deteriorates again within a twelve month period this procedure may be reinstated at the same point in the process as previously reached.
- 3.12. Under the Education Act 2002 the governing body can delegate the initial decision to dismiss to the Head teacher. The School Staffing Regulations 2009 (in accordance with Sections 35 and 36 of the Education Act 2002) allow that the Head teacher should have the delegated responsibility to make the initial decision to dismiss following which there is an opportunity for the employee to appeal to a panel of governors. In relation to the capability procedures this stage comes after the final period during which targets have been set. Any decision to delegate responsibility for staff dismissals to the Head teacher should be considered by the whole governing body and formally agreed and minuted by them.
- 3.13. If the governing body decide not to delegate this responsibility it will be necessary to establish a committee of ideally three governors and delegate to them the initial decision to dismiss (or determine any other appropriate outcome of the procedure).
- 3.14. It is essential when the capability procedure commences that the employee and their trade union or professional association representative are provided with a clear statement as to the process and who will make the judgement with regard to the initial decision to dismiss (or some other appropriate outcome). This can be done in the form of a meeting with the employee and their representative or a letter of confirmation (see the advisory support documents available to Head teachers). For clarity, the Head teacher must not both support the process and make any judgement with regard to the initial decision to dismiss.

4. **STAGE 1 - (FIRST TARGET SETTING PERIOD)**

- 4.1. It is not intended that the capability procedure should replace the normal interchange between the immediate supervisor and a member of staff in the day to day running of the school or department whereby comments may be made informally. Concerns are

likely to be raised when reviewers feedback with regard to evidence obtained as part of the appraisal process.

- 4.2. In the event of a more serious or ongoing concern relating to performance, the Head teacher should ask the employee to discuss the matter, providing five working days' notice of the meeting. A letter summarising the concerns, indicating the date, time and location of the meeting should be sent (see the advisory support documents available to Head teachers). A copy of the capability procedure should be provided to the employee who can be accompanied to the meeting by a trade union or professional association representative. The purpose of the meeting will be to establish:-
- The appraisal procedure is suspended and the capability procedure invoked.
 - That the employee is fully aware of the standards required
 - That the standards have been set at a reasonably attainable level
 - Whether the context in which the employee works has altered significantly
 - That the volume of work is reasonable
 - Whether poor performance is a training issue to be addressed
 - The resources and equipment available are appropriate
 - What support will be given to the employee
 - Timescale for this stage
- 4.3. A system of supporting and advising the employee and monitoring the achievement of agreed targets and standards must be established. Support may take the form of training, visits to other departments or schools, or in some cases it may be appropriate to employ the services of a school improvement adviser consultant or an adviser from an appropriate agency. In the case of teaching staff this may include classroom observation and feedback.
- 4.4. A record must be kept of the agreed targets, support to be provided and timescales for improvement. A copy of this must be given to the employee. Timescales may vary dependent upon the complexities of the job and the level of support/assistance required. Guidelines are included in the advisory support documents available to Head teachers. The employee should also be advised of the next stage in the process as set out in paragraph 4.5 below.
- 4.5. At the end of the review period a meeting to review performance will take place between the Head teacher and the employee. Five working days' notice must be provided of this meeting. There are several outcomes as detailed below:-
- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing. (The appraisal process will resume); or
 - Significant improvement has been made but the review period may be extended to allow the employee additional time to meet all the targets set;

- or the matter moves to Stage 2 because there has been unsatisfactory improvement to performance in which case the process is immediately moving onto Stage 2.
- 4.6. In the case of unsatisfactory improvement the employee should be advised that if performance has not improved by the next review meeting the process will move onto Stage 3. The Head teacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional forms of support may be available to help the employee achieve the standard required. A date will be set for the next review meeting. A letter will also be sent to the employee within five working days detailing the outcome of the meeting taking account of the requirements of paragraph 4.4 above.

5. **STAGE 2 - FORMAL ACTION (SECOND TARGET SETTING PERIOD)**

- 5.1. At the end of the second target setting period a meeting to review performance will take place between the Head teacher and the employee. Five working days' notice must be provided of this meeting. There are several possible outcomes as detailed below:-
- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing. (The appraisal process will resume).
 - Significant improvement has been made but the review period may be extended to allow the employee additional time to meet all the targets set.
 - Unsatisfactory improvement in performance in which case the matter will move to a capability hearing. In the case of unsatisfactory improvement the employee should be advised that if performance does not improve by the time of the next review meeting a Capability Hearing may be scheduled that may result in the employee's dismissal. The employee should also be advised that they have the right of appeal against any sanction imposed.
- 5.2. The Head teacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional forms of support may be available to help the employee achieve the required standard of performance. A date will be set for the final review meeting. A letter will be sent to the employee within five working days detailing the outcome of the meeting.

6. **STAGE 3 - FINAL FORMAL ACTION (CAPABILITY HEARING)**

- 6.1. At the end of the third review period a meeting to review performance will take place between the Head teacher and the employee. Five working days' notice must be provided of this meeting. There are several possible outcomes detailed below:-
- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing. (The appraisal process will then resume.)

- Significant improvement has been made but the review period may be extended to allow the employee additional time to meet all of the targets set.
- Unsatisfactory improvement to performance - The employee will be advised that a meeting of the appropriate committee of the governors will now be convened. The procedure to be followed is set out below.
- Evidence in connection with the employee's capability which has been collected during the previous stages of the capability procedure and the appraisal process will be admissible as part of the proceedings and should be shared with all parties.
- The hearing might determine that where the capability issue relates to management duties rather than classroom teaching, consideration should be given to the reallocation of duties with appropriate consequences for pay.
- The governing body may determine that the employee should no longer work at the school on the grounds of capability if he/she is not performing adequately.
- The meeting will be supported by a representative of the LA
- If an employee is dismissed as a result of the hearing they should be advised that the Head teacher will make a referral to the Department for Education.

7. **CAPABILITY HEARING - PROCEDURE**

Note: The Head teacher can present the case or hear the case (but cannot do both)

7.1. Presentation of the Case against the Employee

7.1.1. The Head teacher (or representative) makes an opening address outlining the case against the employee.

7.1.2. The Head teacher (or representative) calls witnesses (if any) and taking each one in turn:-

- questions each witness
- the employee (or representative) questions each witness
- the Head teacher (or representative) can further question each witness
- the governor panel (or Head teacher) can question each witness
- the witness withdraws.

7.1.3. The employee (or representative) can question the Head teacher (or representative).

7.1.4. The governor panel (or the Head teacher) can question the Head teacher (or representative).

7.2. Presentation of the Employee Case

7.2.1. The employee (or representative) makes an opening address outlining their case.

7.2.2. The employee (or representative) calls witnesses, if any, and taking each one in turn:-

- questions each witness

- the Head teacher (or representative) questions each witness
- the employee (or representative) can further question each witness
- the governor panel (or the Head teacher) can question each witness
- the witness withdraws.

7.2.3. The Head teacher (or representative) can question the employee.

7.2.4. The governor panel (or Head teacher) can question the employee.

7.3. Summing Up

7.3.1. The Head teacher (or representative) and the employee (or representative) have the opportunity to sum up their case if they so wish, the employee to have the last word.

7.3.2. Both parties then withdraw.

7.4. The Decision

7.4.1. The Head teacher or the panel of governors with the Executive Director for Children's Services, Schools and Families (or his/her representative) if in attendance will deliberate in private only recalling the parties to clarify uncertainty with regard to the evidence already given. If recall is necessary both parties return even if only one is concerned with the matter giving rise to doubt.

7.4.2. The decision will be announced to the parties at the end of the hearing whenever possible. The Head teacher or chair of the governor panel will confirm the decision in writing within five working days of the decision. (See paragraph 8 below where the decision is to dismiss the member of staff).

7.5. Appeal Hearing

7.5.1. Appeal Hearings will follow the procedure set out above but the appeal will be heard by a panel of governors (but not the same governors that considered the hearing).

7.5.2. An employee may lodge an appeal against the outcome of a capability hearing in writing within 10 working days of the date on which the employee receives written confirmation of the outcome of the meeting.

7.5.3. The letter of appeal from the employee should state whether:-

- It is against the findings of the hearing; and or
- The sanction determined by the hearing; and/or
- The capability procedure has been applied defectively or unfairly; and/or
- New evidence has come to light which was not available at the hearing and which might make a difference to the original decision.

7.5.4. All appeals will be heard at the earliest possible date having regard for proper notice to the parties (five working days minimum notification).

7.5.5. Supporting paperwork to be relied on at the appeal (together with information regarding any witnesses) must be exchanged by the parties at least five working days ahead of the appeal.

8. **DISMISSAL**

8.1. In voluntary aided, foundation or academy schools once the decision to dismiss has been taken the Governing Body will dismiss the employee with appropriate notice.

8.2. In community and voluntary controlled schools once the decision to dismiss has been taken the Governing Body will notify the local authority of its decision and the reason for it. The local authority is then required to dismiss within 14 days of the date of the notification.

9. **ACTION AGAINST AN ACCREDITED REPRESENTATIVE OF A TRADE UNION OR PROFESSIONAL ASSOCIATION**

9.1. The procedure applies to employees who are union and professional association representatives but no action should be taken beyond the informal stage until the circumstances of the case have been discussed with a senior or regional professional association or trade union representative and a representative from the HR Services Team of the LA.

Approved by:

Date:

Last reviewed on: December 2020

Next review due: December 2021

TIMESCALES AND TARGET SETTING

Stage 1

- If the targets have been met the employee should be informed that the matter will not be progressed at this stage. Should the employee's performance fail to meet acceptable standards within the next 12 month period the procedure will be reinstated at Stage 1.
- In normal circumstances the employee will be allowed between four weeks and eight weeks to demonstrate improvement in performance and meet the targets set.

Stage 2

- If the targets have been met the employee should be informed that the matter will not be progressed at this stage. Should the employee's performance fail to meet acceptable standards within the next 12 month period the procedure will be reinstated at Stage 2.
- In normal circumstances the employee will be allowed between four weeks and ten weeks to demonstrate improvement in performance and meet the targets set.

Dismissal

- Dismissal will be with pay in lieu of notice. The notice will run from the date of the initial decision to dismiss.

Variations

The following variations in action may be appropriate in certain circumstances:-

- In accordance with the timescales and target setting procedures set out above where the procedure is halted but performance subsequently falls below an acceptable standard within a twelve month period the procedure will be reinstated at the relevant stage.
- When considering a decision to dismiss the Head teacher or the governing body, as appropriate, may decide to issue a further final written warning (on the same terms).
- Redeployment to an alternative post in the school, with appropriate adjustments to terms and conditions of service.
- In cases where the incapability relates to a management role the sanction may include the withdrawal of allowances specifically related to management responsibility (for example, a teaching and learning responsibility payment for a teacher).
- Where targets are set at Stage 3 the maximum period before the review meeting will be four weeks. This provision is likely to be used in extreme cases (where, for example the health and safety of pupils was in jeopardy). The review period will need to reflect the targets set.
- Where it appears that an employee has committed a single error and the actual or potential consequences of that error are so serious as to render it impossible to allow the employee to continue in employment, the gross misconduct provisions of the disciplinary procedures

in respect of conduct will be invoked and the employee will be liable to summary dismissal if the complaint is upheld. (See chapter 4, Section 1 of the Personnel Handbook).

