

Applecroft School



Capability Procedure and Policy

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| Person Responsible: | Headteacher |
| Review Cycle: | Annual |
| Date of Issue: | June 2025 |
| Review Date: | June 2026 |

The Professional Associations/Trade Unions have been consulted on this document, and HfL recommends it for adoption.

This policy is based on the Model Herts policy of the same name.

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Capability Procedure and Policy

1) Introduction:

School Vision:

'To be a positive and inspiring community that nurtures each individual and empowers leaders for life'.

School Mission Statement:

'Nurturing Potential, Inspiring Minds, Changing Lives'.

School Values:

- Ambition and Leadership
- Kindness and Supportiveness
- Respect and Honesty
- Determination and Resilience.

This procedure applies only to teachers, Headteachers and support staff employed by the school where there are serious concerns about performance that have not been resolved through the appraisal process. It does not apply to newly qualified teachers or employees in their probationary period in respect of which there are alternative procedures in place.

This procedure does not form part of any employees' contract of employment and it may be amended at any time.

Concerns raised about performance as well as support and advice given at all stages should be well documented.

Employees who are subject to the capability procedure are strongly advised to contact their trade union/professional association for support. A list of accredited county professional association and trade union representatives is available upon request from the school who can access this via the HR knowledge portal.

2) Purpose, Scope and Principles:

The capability procedure provides a framework for resolving issues where an employee's performance has fallen below the accepted level for the role. It is necessary for promoting fairness and order in the treatment of individuals and is designed to help and encourage all employees to achieve and maintain high standards of performance at work.

With the exception of very serious concerns, this procedure should only be followed when concerns have been identified over a reasonable period of time which could include the quality of teaching and learning (lesson observation, children's books, assessment etc.). In the first instance performance issues should normally be dealt with informally between the employee and line manager as part of day to day management. It would not usually be appropriate to react to one observation that falls below expectations by invoking this procedure. In such cases detailed feedback and appropriate support should be given to ensure that the concerns are understood and can be acted upon. It is reasonable to follow up a weak observation by undertaking another to give an employee a chance to show it was a one-off. A reasonable period of time (at least a week) should be allowed for the individual to reflect on the observation and any support or advice given before a follow up observation is carried out.

Concerns raised about performance as well as support and advice given at all stages should be well documented.

Relevant training should be considered, noting that training can take many forms and does not have to be external.

At every formal stage in the procedure, the employee will:

- be advised in writing of the nature of the performance concerns
- have the right to be accompanied by their accredited trade union/professional association representative or work colleague
- be given 5 working days' notice of any formal meeting
- have a right of appeal against any warning given.

3) Misconduct:

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct.

In such cases the disciplinary procedure should be used rather than the capability procedure.

4) Definition and Separation of Roles:

4.1 Employees

Every employee has a contractual responsibility to perform at an appropriate level and the requirement to meet any relevant standards; this includes compliance with the schools' code of conduct. Employees are therefore, expected to be committed to achieving appropriate levels of performance.

4.2 Line Manager

The process will usually be undertaken by the Headteacher, but may be delegated to another senior colleague, such as a deputy head, assistant head or business managers (for non-teaching staff). In some circumstances formal capability meetings may be arranged and conducted by an appropriate senior line manager with the Headteacher's agreement. The Headteacher or line manager will consider the evidence, reach a conclusion and issue a warning as necessary. The Headteacher or line manager will specify the improvement required and support to be provided as part of the warning process.

4.3 Chair of Trustees

It is possible that as part of the normal working relationship between the Headteacher and chair of trustees, they will have discussed details of concerns about the employee. If that is the case, the chair of trustees can take no part in any hearing.

In cases where the Headteacher is the subject of concerns, the chair of trustees will carry out the functions normally allocated to the Headteacher in this procedure. The chair of trustees will need to take advice from a HR adviser. The chair of trustees will be responsible for organising hearings or appeals at any stage.

4.4 Other Trustees

The Board of Trustees has quite specific tasks to perform under this procedure in relation to appeal and dismissal hearings, when they will be expected to form a panel of three trustees. Trustees who are employees of the school should not form part of the panel. It is inappropriate for trustees to be involved in detailed discussion or consideration of performance concerns at any other time outside those trustees who are part of the Pay Review Committee. It is also inappropriate for details of any capability cases to be discussed at a full meeting of the Board of Trustees.

In some exceptional circumstances there may not be enough trustees without prior involvement to form a panel at a hearing; the Governance team can assist in finding trustees from other schools in such instances.

4.5 Expert Advice

The Headteacher or chair of trustees may need to seek expert advice at the outset or during the process. Applecroft School, subscribe to Stone King for HR services and advice should be sort from them.

4.6 Advisory Staff

It will often be appropriate for the school to seek specialist or outside advice in dealing with sustained and/or serious poor performance or lack of capability, as part of the general support role, in giving or arranging advice and support for individual employees and in providing evidence for formal meetings.

5) Right to be Accompanied:

An employee has the right to be accompanied and supported, at each formal stage of the procedure where action may be taken (including appeal), by a work colleague or an accredited professional association/trade union representative.

The employee should give advance notice if he/she is to be accompanied, and by whom (within 2 working days of the meeting). If the professional association/trade union representative or work colleague is unavailable at the time of the meeting or hearing, the employee should contact the individual who convened the meeting to postpone the hearing (once) to a time that is mutually convenient to all parties. Any postponement should be within a reasonable timescale and should not normally extend beyond five working days. During the meeting the companion may put the employee's case forward and confer with the employee, however, they may not answer questions on the employee's behalf or make any representations if the employee indicates they do not wish this.

6) Informal Management Period:

Before embarking on the formal capability procedure, management should ensure that through normal performance appraisal and management supervision:

- the employee has been alerted to concerns
- the employee is clear on agreed expectation of standards of performance
- that concerns about a teachers performance have been raised within the schools' monitoring procedures including the appraisal process where appropriate and support and reviews undertaken
- a performance improvement plan (PIP) has been set with support and a timescale for review (usually between four to six weeks dependent upon the severity of the underperformance)
- a copy of this procedure has been given to the employee.

7) The Capability Procedure:

See Appendix 1 for a procedural flowchart.

Where performance concerns have not been successfully addressed and managed using:

- the normal appraisal management channels; and
- informal methods.

An assessment/investigation will be undertaken to decide if there are grounds for taking formal action under this procedure, including review of any records relating to the employees work performance

The degree of assessment/investigation involved will depend on the circumstances but may involve reviewing the employees personnel file including appraisal records, gathering relevant documents, monitoring the employees work and if appropriate interviewing the employee and/or other individuals confidentially in respect of the employees work. The employee should be invited in writing to attend a formal capability meeting with their professional association/trade union representative or work colleague. At least five working days' notice will be given. The letter will inform the employee that the appraisal process is suspended and will no longer apply whilst the employee's performance is being managed under the capability procedure. The letter will contain sufficient information about the performance concerns and possible consequences, e.g. a first written or final written warning could be issued, to enable the employee to prepare their case for formal capability meeting. Any copies of written evidence will be enclosed with the letter together with a copy of the capability procedure.

Where it is known that an individual is a member of a professional association or trade union and the name and contact details of their representative are available it is advised that the representative in question be consulted when arranging any formal meetings in order to minimise the possibility of delays.

7.1 Stage 1 - formal capability hearing

The employee will be invited in writing to attend any formal capability meeting, the employee will be informed that the appraisal process is suspended and will no longer apply whilst the employee's performance is being managed under the capability procedure.

The employee must make every effort to attend formal meetings and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so (for example health reasons) a formal meeting will be convened in their absence and the decision taken based on the available evidence.

7.1.1 The meeting is intended to establish the facts. At this meeting the Headteacher or senior line manager (with the Headteacher's knowledge and agreement) will:

- identify the performance concerns, the support already given as part of the appraisal policy, the standards required and where the shortfall in their performance has occurred
- provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards)
- consider and discuss any causes and reasons for the shortfall including any reasons why the measures taken so far have not led to improvement. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance and/or refute the evidence presented if appropriate
- after reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the Headteacher or line manager will decide whether:
 - to move into a further period of monitoring without issuing a warning
 - to issue a first written warning
 - to issue a final written warning (serious cases only).

At which point the following will also apply:

- set a PIP and targets for the future standard of performance with agreed objectives set out showing clearly how these will be achieved and measured
- identify the support to be provided to assist the employee in reaching the required PIP (e.g. additional supervision, coaching, observing exemplar lessons) the employee should also be invited to suggest what support that they feel they may benefit from

- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but should usually be four to six weeks or half a term. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for significant improvement to take place
- notes must be taken of the meeting and a copy given to the employee.

If, following response from the employee, it is accepted that it is not appropriate to proceed with the formal capability process; the matter could be addressed via performance appraisal or relevant management support. Otherwise, the decision and reasons for it will be put in writing.

7.1.2 Monitoring and review period following a formal capability hearing

A performance monitoring and review period will follow the stage 1 formal capability hearing. Formal monitoring, evaluation, guidance and support will continue during this period and there should be an informal feedback meeting/s. At the end of the review period a letter will be sent to the employee advising either

- that performance has improved to a satisfactory level and no further action will be taken
- that substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 2 capability hearing (or stage 3 if a final written warning was initially issued).

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

7.2 Stage 2 – formal capability meeting

The formal hearing allows the employee to respond to the assessment that their performance has failed to improve and to explain the failure. The stage 2 meeting may also be instigated if there is further evidence of poor performance during the period of the first written warning.

The meeting will cover:

- the areas in which the employee has not met the required performance standards set out in the PIP and previous warning
- any relevant documents including minutes from Stage 1 formal meeting.

7.2.1 Conducting the stage 2 formal capability meeting

Follow the guidelines set out in section 7.1

7.2.2 Outcome of the stage 2 formal capability meeting

There are three possible outcomes to the **stage 2 meeting**:

- Outcome 1: Sufficient improvement, in which case the capability procedure will cease and appraisal process will resume
- Outcome 2: There has been some improvement, and there is confidence that more is likely, but further support or monitoring is required and the monitoring, review period and PIP will be extended
- Outcome 3: If no, or insufficient improvement has been made, the employee will receive either a first written warning if one wasn't issued at the commencement of the formal capability meeting or a final written warning if a first written warning has already been issued.

The decision will be confirmed in writing.

7.2.3 Monitoring and review period following stage 2 capability hearing

A performance-monitoring period will follow the stage 1 formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period and there should be an informal feedback meeting/s. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken
- that substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 3 capability hearing.

At all stages, if the employee cannot attend a meeting the employee should inform the Headteacher immediately and an alternative date will be arranged. The employee must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so (for example health reasons) a hearing may be convened and the decision taken based on the available evidence.

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

7.3 Stage 3 – formal capability hearing (the dismissal stage)

7.3.1 Where dismissal is a possible outcome, a panel of three trustees will normally hear the case at this stage unless it is felt appropriate for the Headteacher to do so. If the case concerns the Headteacher, a panel of trustees would hear the case. Where this is impracticable, or would cause unreasonable delays, a panel of two trustees may hear the case.

The employee will be given no less than five working days' notice in writing of the hearing.

Copies of all relevant documents will be sent by the school to the panel members before the meeting.

The letter will contain:

- the purpose, time and place of the meeting
- the areas in which the employee has not met the required performance standards set out in the PIP and final written warning
- the right to be accompanied by a work colleague or their professional association/trade union representative and no one else
- details of who will be attending the meeting (e.g. Headteacher, employee, expert witness/es)
- the requirement for the employee to provide to the school, at least four working days before the meeting, six hard copies of all documents that he/she intends to present at the hearing and enough copies for all those, except witnesses who will be present at the hearing
- all relevant documentation that will be used as evidence at the meeting (e.g. copies of objectives, the support provided, and review meeting minutes).

Copies of all relevant documents will be sent by the school to the panel members before the hearing.

7.3.2 At any meeting where dismissal is to be considered, the following provision applies:

- at any academy, the school is encouraged to invite an HR adviser. If an HR adviser is to be in attendance, the school must send all of the papers for the meeting to the HR adviser no later than the date on which the papers are sent to the employee.

Dismissal on the grounds of capability shall be with notice.

The outcome will be confirmed in writing to the employee as soon as reasonable practicable and usually within five working days.

8) Appeals:

An employee may appeal against a warning or dismissal at any stage within seven calendar days specifying the grounds of appeal. Where a senior manager issued a warning the appeal may be heard by the Headteacher.

Wherever possible, the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decisions to impose the original sanction.

The appeal hearing may be a complete rehearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the school's discretion depending on the circumstances of the case.

If an appeal is not made within seven calendar days the school will assume the employee accepts the decision.

At least four working days before the hearing, the employee shall provide all documents that he/she intends to present at the hearing. The documents must be presented in hard copy and with sufficient copies for those, except witnesses, who will attend the hearing. Copies of all the papers to be presented will be sent to panel members prior to the hearing.

Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

The decision of an appeal panel at each stage will be final and will be reported to the Board of Trustees. The outcome of the appeal will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

New evidence will only be considered if relevant and there is a good reason why this was not included as part of the original hearing.

9) Duration of Warnings:

In circumstances where a written or final written warning is issued it will be placed on the employees personnel file normally for a period of 12 months, unless the employee is notified to the contrary. After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future capability proceedings.

If an employee is subject to the formal capability procedure, or has a live warning in place at the time of a reference request, this must be referred to in any employment reference.

There may be occasions when an expired warning cannot be disregarded, such as where the performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where

such a pattern emerges, an employee's record of previous warnings will be borne in mind in deciding how long any new warning will last or whether it is appropriate to undertake disciplinary action instead, on the basis that the employee has been able to previously demonstrate that capability is not in question.

10) Disputes about the Procedure:

Where there is evidence of poor performance there will be no access to the grievance or harassment and bullying policies and procedures for matters related to the application of the capability procedure.

Where issues arise, for example identified support has not been provided; they should be raised during the support programme and at any subsequent formal meeting/hearing and appeal process.

If the complaint concerns matters that are unrelated to the capability process, it can be raised under the Grievance Procedure.

11) Expiry of Warnings and References:

If an employee is subject to the capability procedure, or has a live warning in place at the time of a reference request, this must be referred to in any employment reference.

There may be occasions when an expired warning cannot be disregarded; such as where the performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where such a pattern emerges, an employee's record of previous warnings will be borne in mind in deciding how long any new warning will last or whether it is appropriate to undertake disciplinary action instead, on the basis that the employee has been able to previously demonstrate that capability is not in question.

The employee will need to be at work throughout the relevant warning period. If they should be absent from work for any reason, for example sickness this period will not count for the purposes of the warning period.

Appendix 1 - Capability procedure flowchart

