

Spring Lane school

Capability Policy

2022-2023



Document Owner:	J Bradley			
Document Type:	Strategy/Policy/Procedure			
Date:	November 2022			
Version:	V1.1			
Review Period:	Annually			
Date Approved:	November 2022			
Approved by:	Governing Body – Full GB			
Version Control Tracking				
Version	Date	Revision Description	Editor	Status
V1	Nov 21	Policy creation – from Local Authority guidance	JB	approved
V1.1	Nov 2022	Annual review	JB	approved

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1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

This policy shall apply to all employees, both teaching and support Staff employed directly within the school if problems arise which appear to relate to the capability of the member of staff to carry out the duties for which he/she is employed. This policy will also apply to Teachers employed in Central Services. For support staff employed through Environment and Development Services (e.g. Caretakers, Cleaners and Kitchen staff) the procedure outlined in Appendix Q of the local conditions of service for Local Government Services staff should be used. In accordance with this procedure, if there are issues in relation to Head Teacher/Head of Service, the role of the Head Teacher in this procedure shall be undertaken by the Chair of Governors or such person as may be appointed by the Governing Body or the Director of Children's Services (or his/her representative).

Capability relates to the skills, aptitudes, mental or physical health of an employee and is therefore separate from the Disciplinary Procedure which is mainly concerned with an employee's conduct. This procedure should be seen as supportive in terms of addressing perceived concerns. Lack of capability is defined as a situation in which a member of staff fails consistently to perform his or her duties to a professionally acceptable standard.

- In dealing with capability issues the first concern must be to ensure that any member of staff who experiences difficulties in his/her duties should receive maximum assistance, support and training to try to remedy the areas giving cause for concern, through an informal support plan.
- The possible causes of a member of staff experiencing problems should be identified, if possible, as they will have a bearing on the kind of support to be provided, this will have recognition that the causes may be temporary, due to external and personal factors.
- A gradual deterioration in health can be a factor, in which case assistance from Children's Services Personnel Services should be sought for arrangements to be made for referral to the Occupational Health Doctor if appropriate. In such cases the Authority's procedure on the Management of Sickness Absence in Schools and Services could also be applied.
- An enforced change in circumstances e.g. redeployment or new or additional responsibilities can affect performance.
- Perceived inadequate management support, unreasonable demands or workload or lack of appropriate training can affect performance.
- In some cases a Head of Establishment/Chair of Governors, following consultation with the Director of Children's Services (or his/her representative), may consider that a member of staff would benefit from:
 - Voluntary redeployment to another more suitable post within the establishment, with training/retraining support as necessary; or
 - Medical advice/treatment where the Head of Establishment/Chair of Governors, following consultation with the Director of Children's Services (or his/her representative) considers that the member of staff's lack of capability is arising from ill-health. Advice may be given by the Director of Children's Services (or his/her representative) about an infirmity pension. In such cases the Authority's procedure on the Management of Sickness Absence in Schools and Services could also be applied; or
 - Where the reason for the problem and a possible solution is less clear, more intensive counselling and/or advice.

The formal procedures are intended to be used in those situations in which a member of staff fails consistently to perform his or her duties to a professionally acceptable standard and after informal steps have failed to achieve a satisfactory outcome.

2. Principles

This procedure embodies the following principles:-

- To encourage a sensitive and constructive approach to capability issues.
- To establish that the responsibility for resolving capability issues rests with Headteachers and Chairs of Governors receiving advice from the Director of Children's Services (or his/her representative) as appropriate. Resolution of capability in respect of the Headteacher rests with the Chair of Governors with advice from the Director of Children's Services (or his/her representative).
- To ensure capability issues are dealt with efficiently, with clear outcomes resulting at all stages.
- To involve and recognise the value of the role of Trade Unions and Professional Associations in the operation of the procedure.
- To ensure that standards of work required are explained and comply with the Conditions of Employment and accepted standards of professionalism.
- All members of staff must have a job description which should be mutually agreed which sets out the responsibilities of the post. Job descriptions should be reviewed on a regular basis in consultation with the member of staff concerned to ensure that they remain relevant to the establishment's needs and members of staff are aware of what is expected of them. In addition all members of staff should be aware of school and departmental policies where appropriate.
- To ensure that the member of staff is provided with the necessary support, advice, assistance and training to try to achieve an improvement in their performance.
- To recognise that whilst every effort will be made to help and improve the performance of the member of staff with a capability problem, continued employment cannot be guaranteed.
- When dealing with capability matters the utmost confidentiality must be maintained on a "needs to know" basis. At the commencement of any meetings the importance of confidentiality must be explained and stressed. Governors and particularly the Chair should be made aware that their involvement in any stage of the capability procedure will prejudice any involvement at a later stage. The content of any papers which are circulated must not be divulged to anyone. The way in which Governors vote and opinions expressed at Governors' meetings must always be regarded as confidential. Governors e.g. parents and teachers are representatives of their appointing bodies rather than delegates and any unauthorised reporting back to persons outside the Governing Body removes the protection of privilege and action for defamation could result. The minutes of confidential meetings must be kept separate and not made available for inspection.
- In cases where a member of staff is given any formal warning or is suspended the Governing Body at their next ordinary meeting, or a specially convened meeting, should be informed of action which has been taken. No discussion should take place. The Governing Body should receive and note the report.

2. Legislation and guidance

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to '**staff**' include the Headteacher, teachers and support staff, unless indicated otherwise.

4. Roles and responsibilities

Where the member of staff subject to the procedure is the Headteacher, the Chair of Governors will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the Headteacher, the Headteacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

5. Identification and Support

Identification of support may arise through one or more quality assurance cycles, which may include

- Book Look
- Lesson observation
- A recurrent number of Learning Walks

Staff needing support are entitled to informal support prior to any formal procedure. This will be actioned through a Informal Support Plan, whereby skilled helpers, mentors and professionals will informally support a member of staff on some key areas identified to improve their practice; an informal Support Plan is agreed.

An informal support plan will have the following elements:

- 6 week duration (with the option to extend)
- 1:1 or 1:2 Coaching support
- Identified development areas that are in line with Teaching Standards, are achievable and measurable
- Pre-meets of teaching plans
- Lesson drop-ins to focus on development areas
- Post-meets to evaluate and coach practice

The informal additional support plan is a way of helping staff meet standards before the need for formal capability procedures, the agreement ends when the key foci have been met, or the informal support can be extended beyond the 6-week process by the Headteacher if it would be of benefit to support the staff member for longer.

The informal support plan will move to formal capability procedure if there is a lack of progress against the development areas. (See appendix 2 for the Informal additional support document)

6. Capability procedure

Performance is monitored on a day-to-day basis by line managers. The restructure of a clear line management structure allows for 1:1's. The school has also built in a CPD program that facilitates quality assurance sessions in departments and across school.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before capability procedures are triggered. Evidence of this will be available before the process begins.

5.1 Formal capability meeting – Capability Stage 1

At least 5 working days' written notice will be given of the formal capability meeting, and will explain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

It will be conducted by the chair of governors for Headteachers and a member of the senior leadership team for other teachers.

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

6.1.1 Possible outcomes

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the appraisal process.

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the Teachers' Standards or other relevant standards, career stage expectations and/or job description
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed
- Warn the staff member that failure to improve within this timetable could lead to dismissal

6.1.2 After the meeting

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

6.2 Monitoring and review period

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting.

The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see 5.4, below).

6.3 Further Formal review meeting –Capability Stage 2

If it is determined by the Headteacher, a further formal meeting will take place, with at least 10 working days' notice will be given, in writing of the further formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period
- If no, or insufficient improvement has been made during the monitoring and review period and there is no efforts or confidence that the staff member will make improvements, then this should escalate to Stage 3 Capability, a Hearing.

Notes will be taken of formal meetings and a copy sent to the member of staff.

The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The staff member will be invited to a decision meeting.

6.4 Decision Hearing – Capability Stage 3

At least 10 working days' notice will be given of the hearing, which will take place with a Governors committee. It is here whereby standards are discussed, support explored or dismissal grounds are executed, or whether there is a course of action needed. The letter will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

If an acceptable standard of performance has now been achieved, the capability procedure will end and the appraisal process will re-start.

If the staff member's performance does not improve to a sufficient standard, a decision, or recommendation to the governing board, may be made that the staff member should be dismissed or required to cease working at the school.

The staff member will be informed as soon as possible of:

- The reasons for the dismissal
- The date on which the employment contract will end
- The appropriate period of notice
- Their right of appeal

6.5 Dismissal

The power to decide that members of staff should no longer work at this school rests with the governing board. Once the decision that the staff member should no longer work at the school has been taken, the Headteacher and or chair of governors will notify the local authority of its decision and the reasons for it. Where staff work solely at this school, the local authority must dismiss them within 14 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.

7. Right to appeal

If a staff member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 15 working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case.

The staff member will be informed in writing of the results of the appeal hearing within 10 working days of appeal.

8. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and governing board to quality assure the operation and effectiveness of the system.

9. Consistency of treatment and fairness

The governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The governing board is aware of the guidance and provisions of the Equality Act 2010.

10. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Teachers' appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives

11. Policy Monitoring, Evaluation and Review

The Trust Board will review this policy at least every two years and assess its implementation and effectiveness. The policy will be promoted and implemented throughout the school.

Adopted by Spring Lane School On 1st December 2022

Chair of Governors



Headteacher



Appendix 1: capability action plan template

This template can be used as part of the process of supporting a teacher who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

NAME OF STAFF MEMBER	NAME OF APPRAISER	DATE OF MEETING

OBJECTIVE 1:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 2:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 3:		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

Other support provided

MENTOR/COACH ALLOCATED	YES/NO (IF YES GIVE NAME)
Counselling to be provided	Yes/No
Occupational health referral to be made	Yes/No
[Insert any other support provided]	
Formal review date	

SIGNED BY MEMBER OF STAFF	SIGNED BY APPRAISER	DATE

Appendix 2: informal additional support template

<p><u>Context:</u></p> <ul style="list-style-type: none">•
<p><u>Action Points from Previous Meetings (if applicable)</u></p> <ul style="list-style-type: none">•
<p><u>Discussion Points</u></p> <ul style="list-style-type: none">•
<p><u>Action Points</u></p>
<p><u>Agreed Key Foci:</u></p> <ul style="list-style-type: none">•
<p><u>Next Steps/ Assurances</u></p> <ul style="list-style-type: none">•