
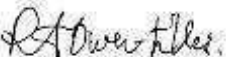




CAPABILITY POLICY

Review Date: September 2024

Name of policy	Capability Policy
Date Policy formally approved by Governing Body	24 September 2020
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Signed (head teacher)	
Signed (chair of governing body)	

Education Policy - Managing Job Performance - Improving Capability v2.0



Version No.	Date approved	Approved by	Amendment
v1.0			New policy
v2.0	25/04/18	Andrea Malam	Reformatting

Education Policy – Managing Job Performance – Improving Capability

Policy approved by	Date approved	Date implemented	Policy owner	Review date
			NE & JP	01/09/23

Prior to contacting Human Resources regarding the content of this policy, it is recommended that you refer to the most up to date version on the intranet and the relevant guides.

As is the case with all intranet documents, this policy is subject to regular review due to legislative and policy changes. The latest versions of all Human Resource documents can be found on the HR intranet pages.

Improving Capability Policy Statement

The Capability policy is to be used in situations where an employee's performance does not meet the required standard. The intention is to ensure that if such issues do arise, they are dealt with in a way that is both clear and fair to the employee, as well as assisting him/her to improve their performance.

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2. Aims

Denbighshire County Council and Governing Body are committed to providing high standards of education to pupils. They are also committed to providing assistance to employees in order for them to achieve the standards of performance expected of them. However, it is recognised that there are occasions when despite best efforts, standards of performance are inadequate and in this event the School must have a fair and supportive procedure that can ensure the continuing delivery of high standard of education to pupils.

At all stages of the process it is paramount that confidentiality is maintained.

This policy is designed to help and encourage all employees in schools to achieve and maintain an acceptable standard of performance. The procedure provides a fair and consistent method of dealing with alleged failures to achieve the expected standard.

3. Application/Scope of Policy

This Procedure applies to all school staff, including teachers who are subject to the School Teachers Pay and Conditions Document (STPCD) and are centrally employed. This procedure also apply to Head Teachers with the exception of:

- Newly qualified employees during their period of induction**
- Casual or temporary employees appointed for less than 13 weeks
- Support staff during their probationary period+.

**Newly Qualified Employees are subject to specific monitoring and support procedures during their period of induction and any capability issues would be addressed within these procedures.

+ Support Staff are subject to a six month probationary period and any capability issues would be addressed within this procedure if the school chooses to adopt the DCC Corporate Probationary Policy and Procedure.

4. Engagement /Participation/Consultation

This procedure has been created following consultation with the recognised teaching and non-teaching unions/associations to ensure that all employees to which the procedure pertains, are treated in a fair and equitable manner.

5. Legal & Other References

The policy complies with the statutory minimum set out in the Human Rights Act 1998 and with consideration to the following legislation:-

- Employment Act 2002

- Employment Rights Act 1996
- Equality Act 2010

No employee shall be treated less favourably on the grounds of sex, race, ethnic or national origin, religion or belief, disability, sexual orientation, marital status, age or language. Neither will they be discriminated against, harassed or victimised because of their application under this policy.

6. Policy

6.1 Capability Issues

The procedure is to be applied when an employee is unable to carry out the duties of his/her post because of capability issues as assessed by reference to knowledge skill, competence or aptitude. It is also essential that any Issues relating to these matters, in the first instance are identified at the earliest opportunity through performance management processes.

Capability issues are defined as a situation in which an employee fails consistently 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. Headteachers 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.

In the case of teachers it is important to be clear about the capability issues which need to be addressed and this may not apply to the whole role for example it may only relate to management capabilities and not teaching capabilities.

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 Disciplinary Procedure.

6.2 Management of the procedure

The Headteacher will decide based on clear evidence whether to invoke the Managing Job Performance Procedure in consultation with the employee's line manager or supervisor following an investigation of the professional problems. The Managing Job Performance Procedure may be invoked at any time if the employee's lack of performance warrants it and at any stage as deemed appropriate by the Headteacher. The employee will be given the opportunity to explain his/her view of his/her performance at all stages of this procedure.

The employee has the right to be accompanied by a Trade Union/Professional Association representative or work colleague at all informal/formal stages of this procedure. At least 5 working days notice must be provided for the meeting.

(i) For the purposes of this document 'Headteacher' means, in the absence of the Headteacher, a representative who is either a Deputy Headteacher or another senior member of staff who has been nominated by the Headteacher, being mindful that the Headteacher holds ultimate responsibility for the management of the process.

6.3 Staff who are absent through illness

Absence which is triggered by the Managing Job Performance Procedure, and which management believes is likely to be long term, should be referred immediately to the occupational health adviser to assess whether the employee is fit for continued employment.

Schools must take a considerate and sympathetic approach, but in general the length of time necessary to wait for an employee's health to improve before considering whether to terminate should be subject to occupational health guidance.

Short term absences should not unreasonably delay any part of the formal stage of the Managing Job Performance Procedure but assessment periods may be extended by up to one week maximum to accommodate this. Reasonable steps should be made to enable the employee to attend formal meetings, but in event of short term illness the meeting may be postponed once and heard within 5 days of the original date. In the event that the employee is still unable to attend, the meetings may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. Their representative may attend on their behalf in these circumstances. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

6.4 Meetings and hearings

Meetings associated with this procedure will be postponed only once on the grounds of self certificated or medically certificated 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.

If an employee fails to attend an arranged hearing for reasons that are outside his/her control and unforeseeable when the hearing was arranged, the hearing will be rearranged in the first instance. If the reason for non-attendance was due to circumstances that were foreseeable or within the employee's control, the hearing will continue in the employee's absence.

The employee shall be given a minimum of 5 working days' notice together with any relevant documentation prior to any meetings associated with this procedure. In order to prevent unnecessary delays and confusion over dates, it should be made explicit in writing that if this date is inconvenient then an alternative date may be offered within 5 working days of the first date. If the second date is inconvenient then the employee and their representative must be informed that the meeting will go ahead in their absence and that they can either send a representative or submit their case in writing for the panel to consider. This complies with the principles contained in the ACAS Code and legislation on the right of representation.

6.5 Representation

A work colleague, union or staff representative has the right to have a say about the date and time of a meeting with an employee.

This will normally be achieved by a date being proposed by the employer and in the eventuality that this date is not convenient an alternative date will be proposed no more than 5 working days after the original date. The guiding principle of meeting arrangements will be that no meeting is unreasonably delayed but if possible mutually agreed. **6.6 Timescales** Normally the period given for improvement will be no more than two terms after entry into the formal procedure.

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 a first formal written warning. In such cases it may also be deemed necessary to miss one or more stages of the Managing Job Performance Procedure as appropriate. You should seek the advice of Human Resources in all such cases.

If performance has not improved sufficiently to meet the targets set, yet the Headteacher 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 of the procedure. However, careful consideration must be given to raising this too early in the process as it may have a negative impact on the individual's performance.

If performance improves to the extent that this procedure is suspended, but then deteriorates again within the duration of a 'live' warning, this procedure may be reinstated at the same point in the process as previously reached.

If the above options are unsuccessful, and if performance is unsatisfactory the employee should be told that the matter will be referred to the governing body Staff Disciplinary / Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing should be recorded in a letter to the employee.

The meeting with the Staff Disciplinary/Dismissal Committee should be held within 5 working days and exchange of documents must take place at this time

The Head teacher may consider agreeing a period of paid leave of absence for the staff member at this stage whilst the process takes place. This should be done in discussion with the employee and where appropriate the trade union representative.

6.7 Notification in Accordance with the Education (Supply of Information (Wales) Regulations 2003

The Regulations require employers to report cases of serious professional incompetence on the part of employees to the GTCW and to report cases of misconduct on the part of employees and other school staff to the Independent Safeguarding Authority (ISA).

If an employee is dismissed as part of this procedure, the case will be reported in accordance with these regulations.

If the Managing Job Performance Procedure is not concluded during the formal stage because the employee resigns, the Staff Disciplinary/Dismissal Committee must still reach a view on whether dismissal would have been the outcome on the basis of evidence available.

For community, community special or voluntary controlled schools, they must notify the DCC Human Resource Department who will advise the GTCW. In the case of staff of voluntary aided, foundation or foundation special schools, the notification to GTCW must be made by the Governing Body.

6.8 Supplementary Information

6.8.1 Capability of a Head Employee or Deputy Head

In the event that issues involve the capability of Head teacher or Deputy, the procedure will remain the same but it will be conducted by a member of the Governing Body who must seek the involvement of the Local Education Authority.

6.8.2 Role of the Governors

The use of Governors to hear appeals against warnings should be limited to ensure a sufficient number of impartial Governors remains available for the dismissal and dismissal appeal committees. Normally at least three Governors are required for the dismissal committee and no fewer for the appeal.

6.8.3 Role of the Local Authority Advisors

Advisers with education experience can be requested to advise the school and where appropriate assist with the process, including classroom observation and providing support. They should also be requested to support the Governing Body in cases involving the Head teacher/Deputy. The school will cover any associated costs in the event of external support being necessary.

6.8.4 Monitoring information

Monitoring should be supportive and include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

6.8.5 Written records and retention of warning on personnel file

A written record should be made of all formal interviews with the employee and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded after a specified period of satisfactory performance. These periods are a total of 2 terms an informal warning and 3 terms for a first written warning and 6 terms for final written warning. When a warning is given part way through a term the equivalent term time in weeks should be calculated

6.8.6 Disputes about the procedure

Any disagreements or grievances about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the Managing Job Performance Procedure or the overall timetable determined as appropriate for handling any particular case.

6.8.7 Grievances

In exceptional circumstances an employee may raise a grievance about the behaviour of a Head teacher or senior member of the leadership team during the course of a Managing Job Performance Procedure. Depending on the circumstances it may be

appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another Head teacher or senior member of the leadership team to deal with the capability case. Any records should be passed to the new Head teacher or senior member of the leadership team and unless it would be unreasonable to do so, the case should be continued within the same timetable.

7. Procedure

7.1 Alternative Assessment Stages in Serious Cases

In a particularly serious case, for example where an employee's classroom control is so poor that order cannot be established or where there are serious implications on the ability of the school to maintain the effective learning environment for pupils, the assessment period can be shortened to a period of four working weeks.

The Head teacher must arrange a formal interview giving at least 5 working days notice and allowing right to be accompanied from either a colleague or Trade Union representative.

At the meeting the employee must be advised of the areas of concern and given opportunity to put forward any explanations for performance issues. In the event of unsatisfactory explanation, the Head teacher should make recommendations and seek the agreement of the staffing committee that the next step needs to be a 4 week assessment procedure. The employee should be advised that failure to improve may lead to dismissal. A letter should be sent to the individual outlining this

Weeks 1 to 4 - Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

Week 4 - Final evaluation meeting to report the assessment of performance over the previous weeks.

If performance has been satisfactory the Managing Job Performance Procedure can cease at this point with a letter from the Head teacher. The final warning will remain on file for 6 terms or the equivalent term time in weeks. If performance subsequently falls below standards in this time, the Head teacher may either;

- a) Implement a further 4 week assessment period or
- b) Refer the matter to the Staff Disciplinary/Dismissal Committee.

This decision will be based on the length of time that has elapsed during the warning period and the extent of the performance issues. The letter to the employee should make this clear.

7.2 Stage 1 – Informal

Where a problem in performance first occurs, it should be the normal practice for the Headteacher or line manager to deal with the matter by counselling, advice, guidance, training and example. It is not intended that the Managing Job Performance Procedure should replace this normal interchange between the immediate supervisor and member of staff in the day to day running of a school or department, whereby comments may be made informally.

Discussions must not harass the employee or turn into a formal interview. If more serious concerns arise or if the employee expresses discontent or indifference to the informal support the formal procedure should be commenced to deal with the matter in a more structured and objective manner. It is important that the employee helps to identify areas of support that they feel would help them reach satisfactory performance.

It is important in the event of a more serious or ongoing concern relating to performance, for the Head teacher to ask the employee and their representative if appropriate to discuss the matter informally, providing at least 5 working days' notice of the meeting. A copy of the Managing Job Performance Procedure should be provided to the employee. The purpose of the meeting will be to establish:

- that the employee is fully aware of the standards required;
- that the standards have been agreed at a reasonably attainable level;
- whether the context in which the employee works has altered significantly;
- whether poor performance is a training issue to be addressed; • what support will be given to the employee;
- the timescale for this informal stage.

A system for 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 schools, or in some cases it may be appropriate to employ the services of a Local Authority adviser or senior member of the school staff to assess standards and achievements and to provide feedback to the employee in line with the performance management framework in the school.

In the case of teaching staff this may include classroom observation and feedback.

A programme could include one or more of:

- in-service training
- help with planning and content of work and any follow-up
- observation by the employee of good practice
- observation of the employee's work by someone (either from the school or outside) with good experience with such observation being promptly fed back to the employee
- a modified workload or timetable for a specified period

- reorganisation of work area, classes or rooms
- work-sharing or team teaching with experienced persons
- visits to other schools or workplaces
- temporary attachment to another school or workplace

Wherever and whenever possible, there will be great merit in inviting an independent and external person to assess and assist the employee concerned.

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 on the complexities of the job and level of support/assistance required. Guidelines are given in Appendix 1. The employee should also be advised of the next stage in the process as detailed below.

At the end of the review period, a meeting to review performance will take place between the Headteacher and the employee. At least 5 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.
- 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 to performance in which case the employee will be advised that an **informal oral warning** is now being issued and that the process is immediately moving onto the next stage (Stage 2 - First Formal Action).

In the case of unsatisfactory improvement, the employee should be advised that if performance does not improve by the next review meeting, a formal written warning may be issued.

The Headteacher 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 next review meeting.

A letter will be sent to the employee within 5 working days detailing the outcomes of the meeting.

7.3 Stage 2 – First Formal Action (4-8 Weeks)

At the end of the second review period, a meeting to review performance will take place between the Headteacher and the employee. At least 5 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.
- 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 to performance in which case the employee will be advised that a **First Written Warning** is now being issued and that the process is immediately moving on to the next stage (Stage 3 - Second Formal Action). In the case of unsatisfactory improvement, the employee should be advised that if performance does not improve by the next review meeting, a final written warning may be issued.

The employee should also be advised that s/he has the right of appeal against any disciplinary penalty imposed.

The Headteacher 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 next review meeting.

A letter will be sent to the employee within 5 working days detailing the outcomes of the meeting.

7.4 Stage 3 – Second Formal Action (4-12 Weeks)

At the end of the third review period a meeting to review performance will take place between the Headteacher and the employee. At least 5 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.
- 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 to performance in which case the employee will be advised that a **Final Written Warning** is now being issued.

In the case of unsatisfactory improvement, the employee should be advised that if performance does not improve by 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 disciplinary penalty imposed.

The Headteacher 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 next review meeting.

A letter will be sent to the employee within 5 working days detailing the outcomes of the meeting.

7.5 Stage 4 – Final Formal Action (Week 8-20)

At the end of the fourth review period a meeting to review performance will take place between the Headteacher and the employee. At least 5 working days' notice must be provided of this meeting. There are several potential 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.
- 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 to performance. The employee will be advised that as a Final Written Warning has already been issued, a formal Capability Hearing will now be convened. The procedure to be followed is set out in Appendix 3. Evidence in connection with the employee's capability, which has been collected during previous stages of the Managing Job Performance Procedure, will be admissible and presented at the Capability Hearing.

7.6 Capability Hearing

The procedure for a formal capability hearing is in Appendix 5.

The Capability Hearing can be conducted by three governors forming the Hearings Committee.

This hearing should be convened within 5 working days when the Stage 4 Hearings Committee may determine that the employee should no longer work at the school on the grounds of capability if s/he is still not performing adequately.

A representative of the Local Authority will attend the hearing.

If an employee is dismissed as a result of the Capability Hearing, they should be advised that the Headteacher will make a referral to the General Teaching Council of Wales.

7.8 Appeal

An employee may appeal against any formal action under the Managing Job Performance Procedure. S/he must write to the Headteacher or the Clerk to the Committee stating the reasons for the appeal, within 5 working days of the date of the letter confirming any formal action taken.

Where no appeal is lodged within this timescale, the matter will be closed.

Where an appeal is lodged, the governing body's Appeal Committee will normally consider the appeal within 10 working days of its receipt.

Any Appeal must not interrupt the progress of the assessment procedure.

The Clerk will inform the employee in writing of the date, time and place of the meeting and forward to the employee any documents to be considered at the Appeal Hearing at least 5 working days before the meeting.

At the Appeal Hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied by a work colleague or trade union official.

The Appeal Committee will hear the appeal and may:

- allow the appeal
- dismiss the appeal;
- reduce or confirm the duration of the warning;

- impose a different sanction from that imposed by the Headteacher/Panel/Hearings Committee;

The Headteacher/Clerk to the Committee will confirm the decision and reasons of the Appeal Committee to the employee in writing within 5 working days of the Appeal Hearing. Copies will be sent to the Human Resources Officer and the Headteacher and a further copy will be placed on the employee's personal file.

If the Appeal Committee overturns a decision to dismiss or remove the employees, record will be amended with effect from the original date of dismissal decision/warning. The Appeal Committee's decision is final.

7.9 Action against an accredited representative of a Trade Union or Professional Association

This can lead to a dispute if it is seen as an attack on a union / association's functions. Although this procedure applies to employees who are union/association representatives, no action under this procedure should be taken beyond the informal stage until the circumstances of the case have been discussed by a senior union / association representative or a full-time union / association official and the Head of School Improvement and Inclusion.