

# St. Peter's CE Primary School, Heswall

## Staff Capability Policy



John 8:12 "I am the light of the world. Whoever follows me will never walk in darkness, but will have the light of life."

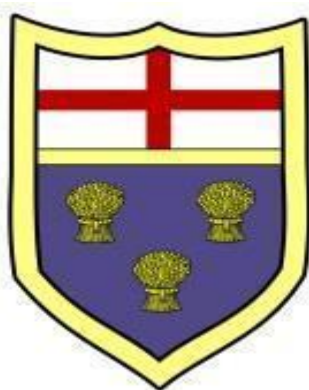
**ST. PETER'S CE PRIMARY SCHOOL**

*firm foundations, shining bright*

Matthew 16:18 "You are Peter and upon this rock I shall build my church."

### OUR VISION

Like St Peter, we build upon the rock of Jesus to enable us to shine: achieving our God given potential and loving ourselves, others, the world and God.



**2022 – 2023**

# **Performance Capability (Work Performance) Policy and Procedure for Teachers and Headteachers**

*Authority Guidelines on Staffing Procedures for Community, Voluntary Controlled, Community Special Schools and Nurseries (and those adopted by Governing Bodies of other maintained/non maintained schools)*

**Updated: September 2022**

**Adopted by the Governing Body**

School:

Date:

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# **Performance Capability Policy**

## **1. Policy Statement**

The aim of this policy is to establish the principles that will be followed in managing teachers or headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

The policy applies to all teachers (including headteacher) who have completed their Early Career Framework Induction period (previously NQT/ RQT), whether they be full-time or part-time. This policy does not apply to those within the Early Career Framework.

Lack of capability is defined as a situation in which an employee fails consistently to perform his/her duties to a professionally acceptable standard. Performance capability can be assessed by reference to skill or aptitude.

The following procedure sets out a framework for dealing with cases involving incapability or other poor performance which is considered not to be attributable to a willful disinclination by the employee to carry out his/her duties efficiently or effectively, but which is thought to be attributable to a lack of skill. In a case where it is considered that there is a willful refusal by an employee to carry out his/her duties on a proper basis, the matter should be dealt with under the school's separate disciplinary procedure.

It is an employee's responsibility to ensure that his/her work performance is maintained at a satisfactory level. Where an employee's work or omission is such as to call into question his/her capability the matter should be dealt with in accordance with the provisions of this procedure.

It is the headteacher / Governors' responsibility to set appropriate performance standards for all employees. National standards for teachers and headteachers and standards set by other relevant professional organisations will form part of the standards for these groups of staff.

Once an acceptable improvement in relation to the identified issue(s) has been achieved, at any stage in this procedure, the procedure should be halted, and no further action taken.

The main emphasis of this procedure is to identify and assess failing professional standards as early as possible; to introduce a mutually agreed support programme; and to monitor and evaluate that programme to enable an employee to fully contribute to the aims of the school.

Issues relating to this policy must always be dealt with on a **professional and confidential** basis, unless they relate to safeguarding or whistleblowing matters.

## **Performance Capability Procedure**

### **2. Context**

The formal performance capability procedure would not normally be invoked unless there is a clear range of evidence of sustained under performance and failure to meet the relevant professional standards, and the appraisal process has not led to the required improvement.

**N.B Please see list of responsibilities below.**

### **3. Roles and Responsibilities**

#### **3.1 Governing Body**

The Governing Body is responsible for implementing appropriate Performance Capability Procedure to ensure the school are ensuring high standard of teaching, learning and strategic oversight of the school. The Governing Body are also responsible for constituting relevant committees for hearings, including the staff dismissal and staff dismissal appeal hearings.

#### **3.2 Chair of Governors**

Where there is a matter concerning the Headteacher, the Chair of Governors is responsible for ensuring that appropriate action is taken in respect of any informal and any proposed formal action is taken by the Governing Body, including any formal hearings and appeals.

#### **3.3 Headteachers**

The Headteacher is responsible for the internal organisation, management and performance of all teachers in the school, including middle and senior management, by taking appropriate action within delegated powers.

#### **3.4 Professional Association, Trade Union**

A Professional Association, Trade Union representative will offer support to employees who are members through the disciplinary process, including representing employees at relevant formal investigatory meetings or disciplinary hearing. If an employee is not a member of a trade union or professional association, they can be supported by a work colleague.

#### **3.5 Employee**

The employee is expected to co-operate fully in the performance capability process, including attendance at any relevant review meetings and performance capability hearings or appeal hearings. The employee is responsible for contacting and liaising with trade union or professional association representatives, or work colleague. Where an employee does not co-operate, a decision may be made in their absence.

***NB It is the responsibility of the employee to make contact with the relevant Professional Association, Trade Union representative or work colleague at the earliest opportunity.***

#### **3.6 Human Resources (HR)**

The role of HR Consultancy provider is to provide HR advice and guidance to the Headteacher/ Governing Body and, where relevant, the Chair of Governors, if the matter concerns the Headteacher.

In addition, the HR Consultancy provider will provide specific advice and guidance to:

Headteacher or Chair of Governors on the potential range of courses of action to address concerns about the work performance of a teacher and providing HR advice at performance capability meetings convened by the Headteacher/ Chair of Governors.

### **3.7 Governing Body Committees**

The possible range of courses of action to take in respect of performance Capability and appeals convened by the school.

***NB The HR Consultancy Team will limit their advice to questions of:***

***1.Law. 2. Procedure. 3. Process.***

***It is for the Headteacher or Governing Body to make the final decision on which course of action to take.***

### **3.8 Wirral Council Legal Services (where appropriate)**

The role of legal services is to provide:

- Advice and guidance on legal matters pertaining to the case
- Specific advice on complex employment law matters
- Advice to governors at performance capability hearing and/or appeal
- Preparation for, and attendance or presentation of cases at employment tribunal and Employment Appeal Tribunal hearings (where appropriate)

***NB Legal advice on employment matters is facilitated through the HR Consultancy.***

## **4. Framework for the management of work performance (Informal)**

### **4.1 Support provided in the Performance Appraisal Process (Informal Support)**

Appraisal is a supportive process which will be used to inform continuing professional development (CPD). The school will encourage a culture in which all teachers continue to take responsibility for improving their teaching through appropriate professional development.

As part of the performance appraisal process, the appraiser must be clear about the expectations and standards to meet both the specific performance objectives and the statutory teacher and headteacher standards.

Where concerns have been identified by the appraiser and discussed with the teacher during the performance appraisal cycle, the school should:

- Highlight the concerns with the teacher, providing specific examples.
- Seek ways to support the teacher to meet the performance objectives set at the start the academic year
- Identify and arrange, where relevant, any CPD activities

### **4.2 Review of Work Performance prior to consideration of transfer to Performance Capability Procedure**

#### **4.2.1 Transition to Capability Meeting**

Where there are concerns about the performance of a teacher or Headteacher **before** making a decision to consider moving from the Performance Appraisal Process to the Capability Procedure, a meeting with the member of staff, the Headteacher and Professional Association or work colleague must be held. In the case of the Headteacher a meeting would be held with the Chair of Governors and Professional Association or work colleague. The teacher/headteacher must be given 10 working days' notice of this meeting.

The outcome of the transition to capability meeting may be:

- i) to continue managing the performance issues in the Performance Appraisal Process  
**or**
- ii) transfer the outstanding concerns into the Capability Procedure.

***NB This meeting may take place part way through Performance Appraisal cycle and any time during the academic year.***

## **5. Performance Capability Procedure (Formal)**

### **5.1 Introduction**

If following the transition to capability procedure meeting, the headteacher decides to move the performance concerns into the formal capability performance procedure, the process below should be followed.

### **5.2 Initial Formal Capability Meeting**

The employee should be given at least 10 working days' notice of the formal capability meeting. The notification letter of the meeting will contain:

- Enough information about the concerns about performance e.g., failure to meet teacher standard(s) (and other relevant standards) and/ or, insufficient progress towards meeting the performance objectives. This is to enable the teacher to prepare to answer the case at a formal capability meeting.
- Possible outcomes from the meeting
- Copies of any written evidence, this should include the written performance appraisal report, support provided prior to transition to capability meeting and notes of the transition to capability meeting.
- The details of the time and place of the meeting
- Advise the teacher of their right to be accompanied by a trade union /professional association or a work colleague. (\*A trade union/professional association official must have been certified by their union as being competent).

This meeting is intended to establish the facts. It will be conducted by:

- The Chair of Governors for headteacher capability meetings  
**or**
- Headteacher or other appropriate senior leader of the school for other staff. For teachers they must hold QTS.

***NB The formal performance capability meeting initiates the capability procedure and provides an opportunity to address serious concerns in a more structured way.***

### **5.3 Format for the formal performance capability meetings**

During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met.

- Allow the employee or his/her representative to:
  - Respond to the concerns
  - provide new information
  - put a different perspective on the evidence collected
- Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*);
- Explain any support that will be available to help the teacher improve their performance.
- 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 in straightforward cases could be between four and ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide enough opportunity for an improvement to take place. NB: Subject to timing of provision of support implemented by the school.
- Formally warn the teacher that failure to improve within the set period could lead to dismissal.

***NB The person conducting the meeting may also adjourn the meeting for further investigation, or where more time is needed to consider any additional information.***

#### **5.4 Outcome of Initial Formal Capability meeting**

The person conducting the meeting, based on the information reviewed in the formal capability meeting, may decide to:

- Revert back to the appraisal process
- Issue a formal warning which may be an oral, written or final written warning, based on the nature and seriousness of the concerns (see para 8 below).

Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

***NB A Final Written Warning may be issued where the concerns are so extreme that the education and/or health and/or wellbeing of pupils is seriously compromised, including failure to meet the teacher/headteacher standards.***

#### **5.5 Record Keeping**

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

Records need to be kept, detailing the action taken and the reasons for it the outcome and any subsequent developments. These records should be carefully **safeguarded** and kept **confidential**.



## **6. Monitoring and Review period following a formal capability meeting**

### **Where a warning has been issued**

A performance monitoring and review period will follow the formal capability meeting.

Where a teacher is subject to a formal review and monitoring period the school should 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 in straightforward cases could be between four and ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, i.e. normally no more than 10 weeks, and should provide enough opportunity for an improvement to take place.

***N.B. Subject to timing of provision of support implemented by the school. Formal monitoring, evaluation, guidance, and support will continue during this period.***

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 an employment decision meeting (see below).

As with formal capability meetings, **at least 10 working days' notice** will be given to the teacher and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a trade union/professional association\* official or a work colleague.

If the person conducting the meeting is satisfied that the teacher has made:

- enough improvement, the capability procedure will be paused, and the appraisal process will re-start. However, the live warning will remain on the teachers file until the warning is expunged.
- 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, the teacher will receive a further warning, which may include a final written warning.

***NB where the employee has been absent due to sickness, it may be appropriate to extend the review period***

## **7. Outcome of a formal capability meeting, after the issuing of an initial warning**

Where a further warning is issued, the teacher will be informed in writing and given information about the timing and handling of the review stage and the procedure and time limits for appealing against any warning issued.

***NB Where a final written warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance, may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.***

## 7.1 Record Keeping

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

Records need to be kept, detailing the action taken and the reasons for it the outcome and any subsequent developments. These records should be carefully **safeguarded** and kept **confidential**.

## 8. Employment Decision Meeting - conducted by Staff Dismissal Committee (where a final written warning has been issued)

The teacher should be notified by the Headteacher in writing and (unless varied by mutual agreement) given a minimum of **10 working days' notice** that the hearing is to be heard by the Staff Dismissal Committee. The letter will give details of the time and place of the meeting, only in exceptional circumstances should the hearing take place out of term time.

The teacher is entitled to be represented by an association representative or a work colleague and this entitlement should be included in the above letter.

The above letter should also include full details of the previously identified capability issues, including copies of any documentation to be used.

The employee should also be advised in the above letter that he/she is able to request the attendance of third parties to substantiate any points they may wish to make in respect of the identified capability issue(s). Persons to be called by the Headteacher should be listed in the letter.

The employee should also be advised that he/she should send to the Headteacher and the Correspondence Clerk of the Governing Body copies of any documents that he/she intends to refer to at the hearing together with a list of third parties requested to attend **not less than 5 working days before the hearing**. In the case of Community, Voluntary Controlled, Community Special, and Maintained Nursery schools a copy of the above letter should be sent to the Director of Children's Services or his nominated officer well in advance of the hearing.

In the case of a capability performance hearing being conducted with a teacher who is an accredited official of a recognised professional association, consultation should take place prior to the above letter being sent with a senior official of their professional association.

NB The Director of Children's Services, or his nominated officer and the Authority's Head of Legal Services (or his nominated representative) will be invited to attend the hearing of the Staff Dismissal Committee and of the Staff Dismissal Appeal Committee, where the school is a Community, Voluntary Controlled, Community Special, and Maintained Nursery schools.

If the Staff Dismissal Committee is satisfied that the teacher has made:

- **enough improvement**, the capability procedure will be paused, and the appraisal process will re-start. However, the live warning will remain on the teachers file until the warning is expunged.
- **some progress** has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. However, the live warning will remain on the teachers file until the warning is expunged.

- **No or insufficient improvement** has been made during the monitoring and review period, the teacher may be dismissed for an unacceptable standard of performance.

***NB A dismissal on the grounds of Capability Performance would result in notice with pay or pay in lieu of notice.***

## **9. Cease to work at the school decisions**

### **9.1 Role of Director of Children's Services** (In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools)

Under the Education Act 2002 such a decision is classified as an initial dismissal decision (IDD). Dismissal and notice period will be effective from the IDD although the employee still has a right of appeal against the decision.

The LA will terminate the employee's employment within 14 days. If the employee is successful at appeal, he/she will be reinstated. It is possible for an appeal to be concluded within the notice period.

A teacher who has been issued with a notice of dismissal could be potentially damaging to the school, pupils and individual teachers. In order to avoid such situations, the teacher could be suspended on **full** pay (if appropriate) until the notice period has expired.

Where an appeal is lodged but the decision to dismiss is upheld, the LA will dismiss without notice within 14 days of the IDD unless the employee submits a resignation before the end of the 14-day period.

### **9.2 Dismissal Decisions**

Termination of the contract of employment on capability grounds will be **with notice pay**.

In the case where an employee is not employed to work solely at the school, the LA will withdraw the employee from work at the school and consider the need to dismiss from other employment with the LA.

## **10. Formal Performance Capability Warnings**

### **10.1 Recorded oral warning**

This will be disregarded after a maximum of six months, provided no further misconduct has occurred within that timescale.

### **10.2 Written warning**

This will be disregarded after a maximum of twelve months, provided no further misconduct has occurred within that timescale.

### **10.3 Final written warning**

This will be disregarded after a maximum of eighteen months provided no further misconduct has occurred within that timescale. It may not be appropriate to take such a final written warning into account, after a period of twelve months has elapsed, in relation to misconduct which is dissimilar to the misconduct which led to the final written warning.

***NB Previous warnings will not be expunged if a subsequent warning has been given to the employee concerned within the appropriate time limits specified above, ie from the date of issuing the previous warning. In cases relating to safeguarding issues, lapsed warnings may be taken into account.***

## **11. Sick Leave whilst subject to Performance Capability Procedures**

Should teachers take extended sick leave whilst subject to Capability Procedures, they will automatically be referred to the Schools designated Occupational Health provider. If the illness is such that an employee is absent long term, then the absence will be dealt with under the Sickness Absence Capability Procedure, and outstanding performance capability concerns will be addressed on return to work.

In such circumstances, either the performance capability procedures should continue where monitoring and assessment of performance has reached a stage where the absence of the teacher would not significantly affect the outcome, or ill-health procedures should be triggered. Performance Capability Procedures **should not be put "on hold" indefinitely** and the Governing Body/ the Headteacher (where appropriate) must make reasonable and responsible judgements as to when to progress these matters if the monitoring and assessment of performance has been omitted through staff absence.

Reasonable steps should be made to enable a teacher/ headteacher to attend all discussions outlined in this Procedure, but where a teacher/ headteacher is unable to attend, these may proceed in the teacher/ headteachers absence, if delay would otherwise compromise the maximum time set aside for the Procedure. In such circumstances a full account of the discussions should be provided in a letter confirming the decision taken.

The Governing Body would be entitled to consider absence due to sickness as forming part of the Capability submission.

## **12. Performance Capability and the Grievance Procedure**

Governors should note that no procedure should automatically take precedence over another. Complaints from a teacher under the school-based Grievance Procedure should not, generally, be taken as a justification for delaying the Capability Performance Procedure. Equally the Grievance Procedure should not be delayed by the Capability Performance Procedure.

Annually reviewed

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Owned by Assets