CARWARDEN HOUSE COMMUNITY SCHOOL

Capability Procedure

Author:	**Headteacher (based on Judicium model policy)**
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Introduction

Carwarden House School applies this policy to all employees (collectively referred to as "you" and "employee" in this policy), apart from recently appointed employees who have not yet successfully completed a probationary period and, with the exception of particularly serious cases Early Career Teachers (ECTs) who have separate support and assessment arrangements in place during their induction period.

We reserve the right not to follow this procedure where an employee has less than two years' continuous service.

This policy does not form part of any employee's contract of employment, is not intended to have contractual effect and may be amended at any time. Employees will be informed when the policy is updated.

Policy Aims

The primary aim of this procedure is to provide a framework within which the school can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

The formal capability procedures will only be instigated when there are serious concerns about an employee's performance that informal guidance and support has been unable to address. Concerns about performance will be dealt with fairly and employees will be given the opportunity to respond at a hearing before any formal action is taken.

Confidentiality

The school aims to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information which is communicated to them in connection with this capability procedure.

Disability

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing duties or providing additional equipment or training. An employee who wishes to discuss or inform the school about any medical condition should contact their line manager or the Headteacher.

Right to be Accompanied

You are entitled to be accompanied to formal meetings held under this procedure by a trade union representative or appropriate work colleague. If your chosen companion is unavailable at the time of the hearing, you can propose an alternative time within 5 working days of the originally scheduled date.

If your companion is not available within 5 working days, we may require you to choose an alternative companion. At a formal hearing your companion can make representations, ask questions, sum up your case, and request an adjournment in order to discuss the case privately with you.

Early Careers Teachers (ECTs)

In a few particularly serious cases it may be necessary to instigate capability procedures, which may lead to dismissal before the end of the induction period. If this is the case, for as long as the ECT remains at the school, the induction process will continue in parallel with the capability procedure. The appropriate body will be consulted with prior to any formal capability process commencing and prior to any dismissal taking place.

Identifying Performance Issues

In the first instance, performance issues should normally be dealt with informally between the employee and their line manager as part of day-to-day management, and for teachers, the appraisal (performance management) process. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help to:

- clarify the required standards;
- identify areas of concern;
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a timescale for review.

If the school has serious concerns about an employee's performance, it will undertake an assessment to decide whether there are grounds for taking formal action under this procedure. The steps involved will depend on the circumstances but may include reviewing the employee's personnel file including any job description and appraisal records, gathering any relevant documents, monitoring work, and meeting the employee to discuss their work.

The school may decide to proceed straight to Stage 3 of this process where the evidence suggests that the employee may have been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

Notification of a Capability Hearing

If the school considers that there are grounds for taking formal action in relation to alleged poor performance, the employee will be required to attend a capability hearing. The school will notify the employee in writing of its decision to initiate the formal capability procedure and confirm:

- the nature of the performance concerns;
- the purpose of the hearing and who will decide the outcome;
- the time, date and location of the capability hearing;
- the employee's right to be accompanied at the hearing;
- copies of any supporting evidence or relevant documents that will be used at the capability hearing;
- the stage of the capability procedure that has been reached; and
- the likely outcome if the school decides after the hearing that performance has been unsatisfactory.

The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time, usually 5 working days, to consider the information provided and prepare for the hearing.

Procedure at Capability Hearings

The employee must make every effort to attend the hearing; 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 attend (for example because of poor health), the school may make decisions based on the available evidence including any written representations made by the employee. The school understands that this procedure may cause employees some stress and anxiety and will endeavour to provide appropriate support; however, an indefinite or lengthy delay is likely to prolong the uncertainty and is therefore unlikely to be in the best interests of employees, pupils or the School.

The hearing will normally be held by the Headteacher or another member of the Senior Leadership Team and may be attended by an HR Advisor and/or a note taker. A Stage 3 hearing may be held by the Headteacher or a panel of one or more trustees.

The aims of a capability hearing will usually include:

- Setting out the required standards that the school believes the employee may have failed to meet, and going through any relevant evidence that has been gathered;
- Allowing the employee to ask questions, present evidence, respond to evidence and make representations;
- Establishing the likely causes of poor performance including any reasons why previous actions have not led to the required improvement;
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- Discussing targets for improvement and a timescale for review;
- If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if the school needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the school's decision and the reasons for it, usually within 5 working days of the capability hearing. Where possible this will also be explained to the employee in person.

Stage 1 Hearing and Outcome

The outcome of the hearing will be communicated to the employee in writing without unreasonable delay and usually within 5 working days, giving full reasons for the decision and information about the right of appeal (if applicable).

If the specific performance concerns are not upheld, or if the decision maker feels that informal action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further formal action will be taken.

If it is decided following a Stage 1 capability hearing that the employee's performance is unsatisfactory, the employee may receive a first written warning, setting out:

- the areas in which the employee has not met the required performance standards;
- clear targets for improvement and a period for review;
- any supportive measures, such as additional training or supervision, which will be implemented with a view to improving performance;

- the consequences of failing to improve within the review period, or of further unsatisfactory performance; and
- the employee's right of appeal and how this can be exercised.

Any warning will normally remain active for a period of twelve months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. Whilst the warning is active, the capability process will be resumed at the same stage if the employee's performance declines. After the active period the warning will remain permanently on the employee's personnel file but will be disregarded in relation to future capability proceedings.

The timescale for the review period will depend on the nature and severity of the concerns and other relevant circumstances of the case. During the review period informal meetings will be held between the employee and the line manager to discuss progress and offer further support.

The employee's performance will be monitored during the review period and they will be informed in writing of the outcome:

- if the line manager is satisfied with the employee's performance, no further action will be taken other than to inform the employee in writing that they have demonstrated the necessary improvement, and to remind them that the capability process may be resumed if their performance declines whilst the written warning is active;
- if the line manager is not satisfied, the employee will be invited to a Stage 2 capability hearing as set out below; or
- if the line manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 2 Hearing and Outcome

If the employee's performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while the first written warning is still active, the employee will be invited to a Stage 2 capability hearing as set out in paragraph 8, and the hearing will be conducted as set out in paragraph 9.

The outcome of the Stage 2 hearing will be communicated to the employee in writing without unreasonable delay and usually within 5 working days, giving full reasons for the decision and information about the right of appeal (if applicable).

If the specific performance concerns are not upheld, or if the decision maker feels that additional action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further action will be taken under Stage 2 of the procedure.

If it is decided following a Stage 2 capability hearing that the employee's performance is unsatisfactory, the employee may receive a final written warning, setting out:

- the areas in which the employee has not met the required performance standards;
- clear targets for improvement and a period for review;
- any supportive measures, such as additional training or supervision, which will be implemented with a view to improving performance;
- the consequences of failing to improve within the review period, or of further unsatisfactory performance; and
- the employee's right of appeal and how this can be exercised.

Any final written warning will normally remain active for a period of twelve months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. Whilst the warning is active, the capability process can be resumed at the same stage if the employee's performance declines. After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in relation to future capability proceedings.

The timescale for the review period will depend on the nature and severity of the concerns and other relevant circumstances of the case. During the review period informal meetings will be held between the employee and the line manager to discuss progress and offer further support.

The employee's performance will be monitored during the review period and he/she will be informed in writing of the outcome:

- if the line manager is satisfied with the employee's performance, no further action will be taken other than to inform the employee in writing that they have demonstrated the necessary improvement, and to remind them that the capability process may be resumed if their performance declines whilst the written warning is active;
- if the line manager is not satisfied, the employee will be invited to a Stage 3 capability hearing as set out below; or
- if the line manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 3 Hearing & Outcome

The school may decide to hold a Stage 3 capability hearing if it has reason to believe that:

- the employee's performance has not improved sufficiently within the review period set out in a final written warning;

- the employee's performance is unsatisfactory while a final written warning is still active; or
- the employee's performance has been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

The employee will receive written notification of the hearing as set out in paragraph 8, and the hearing will be conducted as set out in paragraph 9.

If the specific performance concerns are not upheld, or if the decision maker feels that additional action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further action will be taken under Stage 3 of the procedure.

If it is decided at or following the Stage 3 hearing that the employee's performance is unsatisfactory, the potential outcomes are as follows:

- Dismissal;
- Redeployment into a suitable available job at the same or a lower grade;
- Extending an active final written warning and setting a further review period (in exceptional cases where there is reason to believe that a substantial improvement is likely within the review period); or
- Final written warning (where no final written warning is currently active).

The outcome of the hearing will be communicated to the employee in writing without unreasonable delay and usually within 5 working days, giving full reasons for the decision and information about the right of appeal.

Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving a recently appointed employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate. Dismissal will normally be with notice, or a payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case the employee may be dismissed without notice or any pay in lieu of notice.

Right to Appeal

An employee who feels that a formal decision (first/final written warning or dismissal) about poor performance under this procedure is wrong or unjust can appeal in writing to the Headteacher or Chair of Trustees, stating their full reasons and grounds for appeal, within 5 working days of the decision being communicated in writing. The appeal hearing will be conducted by the Headteacher or a panel of one or more governors. The person or panel hearing the appeal will not have been previously involved in the case. The original decision maker will usually be present. Where the original decision was made by the Headteacher, the appeal will be heard by one or more trustees.

The employee will receive written notice of the date, time and place of the appeal hearing which will normally be held within a reasonable period of time following receipt of the written notice being communicated. The employee is entitled to bring a companion to the appeal hearing (see paragraph 6). If an employee appeals against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of service or pay.

The appeal hearing will be a review of the fairness of the original decision in light of the procedure that was followed and any new information that may have become available. The employee will be given a full and fair opportunity to put forward their grounds for appeal together with any supporting evidence. The appeal will only consider the relevant grounds of appeal and will not be a full re-hearing

The hearing may be adjourned if the school needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The outcome of the appeal hearing may be to:

- confirm the original decision;
- revoke the original decision; or
- substitute a different (but not a higher) penalty.

The employee will be informed in writing of the final decision including reasons for the decision as soon as possible, and usually within 5 working days of the appeal hearing. There will be no further right of appeal.