Maplewell Hall School

Capability Policy

Based on LCC version

Policy Created	**June 2024**
Governing Body Committee	**Personnel Committee**
Date Reviewed	**Autumn Term 25**
Date of Next Review	**Autumn Term 26**

This policy applies to all staff including the Head Teacher.

For Maintained Schools: The Local Authority has the right to be represented at any hearings and this will normally be a member of the LTS HR team acting in an advisory capacity. The panel must consider any advice offered by the Local Authority when making their decision. The school must notify both the employee and the LA of their decision where any dismissal takes place.

This policy does not form part of employees' terms and conditions of employment and therefore may be subject to change at the discretion of the Governing Body.

For the purposes of this policy the Head Teacher will be referred to as 'Head Teacher' and school will be referred to as 'school'.

1. Purpose

1.1 The School will ensure that they have effectively undertaken performance management and provided sufficient opportunities for additional training and/or support to be put in place, via day-to-day management, to enable an employee to reach the required standard of performance. Managers will ensure they have advised an employee of the potential to be managed under this policy, **prior** to its implementation, at the **Transition to Capability** stages of the Performance Management policy,

1.2 This policy outlines the formal process to be followed when an employee continues to fall short of the expected performance for their role. The process is designed to be fair and consistent, focusing on continued support to assist an employee to improve to a satisfactory level of performance. However, where insufficient improvement is seen formal action may be considered.

2. Application of the Policy

2.1. **Roles & Responsibilities**

Where there are concerns regarding the Head Teacher's performance, the Chair of Governors will be responsible for overseeing this process. The school's External Educational Adviser should be involved in managing this process if they have assisted previously with the performance management process.

For all other staff, the process will be undertaken by either the Head Teacher or another manager.

2.2 **Right to Be Accompanied**

At all formal meetings, and at any subsequent hearing, the employee will be advised of their right to be accompanied by either a work colleague or a Trade Union representative.

Notes will be taken during all formal meetings and copies sent to the employee together with any relevant documents (e.g. a formal improvement plan).

2.3 **Right of Appeal**

Individuals will have the right to appeal against formal sanctions. Appeals are to be made in accordance with the School's Appeal Policy.

2.4 **Pay Progression**

For teaching staff, where the capability policy has been invoked the employee will not receive pay progression whilst being managed under this policy.

3. Capability Meeting

3.1 This is a formal process. The purpose of the meeting is to present the facts, allow the employee to respond to concerns about their performance and for the manager to decide how to proceed with the case.

3.2 Five working days' written notification of this meeting will be given and will outline management's concerns about the employee's performance. A copy of all evidence to be presented at the meeting will also be included with this letter.

3.3 The person conducting the meeting will:

- Identify which standards are not being met and give clear guidance on the standard of improved performance required,
- Explain any supportive actions that have previously been put in place and what other additional support may be available to help the employee improve their performance,
- Specify the monitoring and review period for improvement (which will vary in individual cases),
- Ask the employee to respond to the concerns being presented.

3.4 The employee will then:

- Provide evidence to support their position,
- Explain reasons for the shortfall in performance.

3.5 At this point, management will consider the employees response before deciding how to proceed. A decision will then be taken, based on all the information presented at the meeting that either:

a) There are insufficient grounds for pursuing the capability issue(s). The capability procedure will cease, and the remaining concerns may be addressed through the performance management process, **OR**

b) An adjournment is necessary (e.g. for further investigation or to consider any additional information), **OR**

c) There are capability issues to be addressed, which may warrant a final warning if the required improvements are not made following the review period. In these circumstances, a further improvement plan will be put in place, or the original plan reviewed to assist the employee. Timescales for review should also be agreed at this point (usually no longer than 4 to 8 weeks), along with a date for the Review Meeting.

3.6 The employee will receive written outcome of the meeting, along with a copy of the improvement plan and the notes from the meeting.

4. Review Meeting

4.1 Five working days' notice will be given of the formal review meeting, which will be held at the end of the review period.

4.2 Both the person conducting the meeting and the employee will have an opportunity to present evidence to support their position.

4.3 The potential outcomes of the meeting are:

a) If the employee has made sufficient improvement, the capability procedure may cease, and the performance management process will restart, **OR**
b) If some progress has been made and more is likely, it may be appropriate to extend the review period. In most cases it will be appropriate to extend the review period just once, **OR**
c) If no, or insufficient, improvement has been made, the employee will receive a final written warning which will remain on their file for 12 months. A further review period will then be set (which may be the same or less than the previous review period. The employee will be informed in writing of the specific matters covered, the timing and their right to appeal against the warning. They will also be informed that failure to achieve an acceptable level of performance in the next review period may lead to dismissal.

4.4 Where the process is to be continued a further improvement plan will be put in place, outlining expectations and timescales to be achieved by the review date. A date for the Final Review Meeting (see Section 5) should be agreed at this point.

4.5 The employee will receive a written outcome of the meeting, along with a copy of the improvement plan and the notes from the meeting.

5. Final Review Meeting

5.1 Five working days' notice will be given of the final review meeting.

5.2 Both the person conducting the meeting and the employee will have an opportunity to present evidence to support their position.

5.3 The potential outcomes of the meeting are:

a) If the employee has made sufficient improvement, the capability procedure may cease, and the performance management process will continue, **OR**

b) If some progress has been made and more is likely, it may be appropriate to extend the review period. In most cases it will be appropriate to extend the review period just once, **OR**

c) If no, or insufficient, improvement has been made, the employee will be advised that a hearing will be convened to consider the case and that a potential outcome is dismissal. This will be confirmed in writing to the employee.

d)

6. Capability Hearing

6.1 Five working days written notice will be given to the employee to attend a Formal Capability Hearing. This notification should clearly detail:

- The reason(s) for the hearing,
- The employee's right to be accompanied at the hearing by a work colleague or Trade Union representative,
- That a potential outcome of the hearing is dismissal,
- A request for the employee to submit any evidence to support their case.

6.2 Employees will also receive copies of relevant documentation (e.g. formal improvement plan(s), notes of meetings, etc.). Employees will be given an opportunity to provide evidence.

6.3 **Composition of the Panel**

The case will be heard by either an independent person or a Panel of Governors who have not had any previous involvement with original process.

Where the Head Teacher is the decision maker they may wish to be accompanied by a Governor or Governor(s) from the local governing body.

6.4 The potential outcomes of the hearing are:

- Where the employee has made sufficient improvement, the capability procedure may cease and the performance management process will restart, **OR**
- Where no, or insufficient, improvement has been made, the employee will be dismissed with notice.

7. Dismissal

7.1 Dismissals will be with notice. The school will have the option for employees to work their notice, or, be paid in lieu of notice if this is deemed to be appropriate. This should be discussed and agreed with the employee and their representative.

7.2 The employee will be notified in writing of the outcome of the hearing within 3 working days of the hearing. The letter will outline the reason(s) for the dismissal and date of termination of their employment. The letter will also include details of the right to appeal.

[1]. Extreme Circumstances

[1] .1 If the lack of capability jeopardises the education and/or health, safety and wellbeing of pupils, the process/timescale of review periods may be shortened. If after this shortened review period an acceptable level of progress has not been made or it is concluded that the lack of capability continues to jeopardise the education and/or health, safety and wellbeing of pupils then it may be appropriate to proceed directly to a hearing. In these extreme circumstances, it may be appropriate to suspend the employee on full pay pending a formal hearing.