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Lanesend Primary School

Capability Policy 2021

Isle of Wight Policy
School Staff Policy

Signed: Date:
(Headteacher)

Signed: Date:
(Chair of Trustees)

Review Date: March 2022 (Annually)

Reviewed By: Isle of Wight Council and Money Group

Lanesend Primary School Capability Policy

This policy is to be read in conjunction with our Performance Management policies for both teachers and staff.

Appraisal arrangements are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (The Appraisal Regulations).

The Appraisal Regulations set out the principles that apply to teachers (other than Newly Qualified Teachers) in all maintained schools and centrally employed (or unattached) teachers employed by a local authority, in each case where they are employed for one term or more. It is also good practice for academies to follow the appraisal regulations although they are not legally required to do so.

Schools and local authorities must stay within the legal framework set out in the Appraisal Regulations and all schools (including academies) must adhere to any other relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).

This policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. Capability procedures apply only to employees about whose performance there are serious concerns that the appraisal process has been unable to address. It is anticipated that capability procedures should be used in exceptional circumstances only. This policy also can be adopted to use for all staff.

It is important that the appraisal and capability process is managed in a way that avoids increased workload for all parties concerned, for example, reviewing the number and frequency of meetings and lesson observations, and ensuring the process for collecting evidence is always proportionate.

Reviewing Performance

Monitoring of Practice

Lanesend Primary School believes that observation of practice and other responsibilities is one way of assessing employees' performance in order to identify any particular strengths and areas for development they may have, gaining useful information which can inform school improvement more generally and enabling employees to learn from each other and collaborate. All monitoring will be carried out in a supportive fashion and not add to employee workload. Observations should take place in accordance with the schools observation policy with regards to lesson observation and learning walks.

Evidence

The range and level of evidence collected for appraisal and pay determination purposes will always be proportionate and minimise workload. A number of methods may be used and triangulated in order to undertake an overall assessment of the employee's performance. This will include their performance against their objectives and against the relevant standards/key accountabilities for the role. There should be a joint responsibility on the school and the employee to provide such evidence.

The evidence gathered by the school and the employee will largely be determined by the nature and scope of the agreed objectives and/or Teachers' Standards or Standards related to their role. Examples of such evidence may include (but are not limited to) the following:

- Work scrutiny
- Observations
- Reviews of the impact of action planning as a result of assessment data
- External results, such as phonics, SATS, GCSEs, etc
- Review of lesson planning records
- School Improvement Plans
- Moderation within and across the school
- Pupils' voice
- Parents' voice
- Walk-ins
- CPD records and journals

Development & Support

Appraisal is a supportive process which will be used to determine decisions on pay progression and inform continuing professional development. The school wishes to encourage a culture in which all employees take responsibility for improving their performance through appropriate professional development. Professional development will be linked to school improvement priorities and to the ongoing professional development needs and priorities of individual employees.

Feedback

Employees will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place. Constructive feedback will be providing within 5 working days, followed with written feedback as soon as is practicably possible and will highlight particular areas of strength as well as indicate areas for professional learning and future improvement.

Addressing Performance Concerns (Informal Capability)

Dealing with Concerns

Where an employee's performance is deemed to be below acceptable standards based on a range of evidence, and is therefore found not to be meeting the requirements of their role as detailed in the Teachers' Standards document (Appendix A) or their job description, the appraiser will meet the employee formally to:

- give clear feedback to the employee about the nature and seriousness of the concerns;
- give the employee the opportunity to comment and discuss the concerns;
- set clear objectives for professional learning;
- agree any support (e.g. coaching, mentoring, structured observations, CPD, modeling of teaching), that will be provided to help address those specific concerns;
- make clear how, and by when, the appraiser will review progress
- explain the implications and process if no, or insufficient, improvement is made;
- provide a written Performance Improvement Plan confirming what has been agreed;

Whilst there is no formal right to representation at this stage, employees are encouraged to contact their Professional Association or Trade Union Representative for advice and support.

Managerial Support

The employees' progress will continue to be monitored by the manager as part of the appraisal process and a reasonable time given for the employees' performance to improve. During this monitoring period, the employee will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate.

Progress Review

When progress is reviewed, if the appraiser is satisfied that the employee has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

If no, or insufficient improvement, has been made, the employee will be invited to a transition meeting to determine whether formal capability proceedings will be invoked.

Serious Concerns

In most circumstances a structured Performance Improvement Plan will be put in place prior to the Capability Procedure being used. However, the Headteacher / senior manager may determine that it is appropriate to move straight to the Capability Procedure, in the following circumstances:

- the employee's performance is putting the safeguarding and/or health and safety of pupils and/or staff at risk;
- the employee's performance is putting the education of pupils in serious jeopardy;
- the employee's performance has not been sustained independently for 6 months at an acceptable level following an earlier managerial support programme.

In such cases, we will contact our HR provider for advice and to also consider whether the issue that has been raised is indeed a performance issue or a conduct issue. As a result, it may be necessary to refer the matter to an alternative procedure, such as the Disciplinary Procedure, if this is the case, at which point the capability proceedings would pause.

Transition to Formal Capability

If an employee demonstrates serious underperformance or serious concerns are identified and the employee has not responded to support provided, the employee will be notified in writing that informal capability will no longer apply and that their performance will be managed under the Capability Procedure and will be invited to a formal capability meeting.

Capability Procedure

This procedure applies only to employees who are not meeting the appropriate standards where there is serious underperformance which the informal capability process has been unable to address. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a work colleague or trade union representative. Employees are entitled to request an alternative date which is within five days of the original date.

Formal Capability Meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Trustees (for Headteacher capability meetings) or Headteacher/nominated senior leadership (for other employees). The meeting allows the employee, accompanied by a work colleague or trade union representative if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the informal capability process. In such cases, the formal capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting *for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.*

In other cases, the meeting will continue. 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,*
- give clear guidance on the improved standard of performance required from the employee (*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 employee 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 and discussed and agreed with the employee and union representative where possible. It will, however, ultimately be for the person conducting the meeting to decide what an appropriate period of time should be. Consideration should be given to what is reasonable and proportionate and should provide sufficient opportunity for an improvement to take place;
- warn the employee formally that failure to improve within the set period could lead to a written warning, and in more serious cases a final written warning, or dismissal.

Minutes will be taken of the formal meeting and a copy sent to the member of staff.

There are four possible outcomes from the formal capability meeting:

1. A return to the informal capability process, where it is determined that there are insufficient grounds to progress the matter further within the capability procedure.
2. An adjournment, if the person conducting the meeting decides that further investigation is required or that more time is needed to consider the information.
3. A first written warning.
4. A final written warning.

The level of warning should be determined by the seriousness of the concerns that relate to the performance of the employee.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision and will normally be heard within a period of ten working days, unless alternative timescales are agreed between the parties.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The employee 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 below).

Formal Review Meeting

As with formal capability meetings, at least five working days' notice will be given and the notification will provide details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work colleague or trade union representative.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease. 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, the employee will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), 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. The employee will be invited to a decision meeting.

Decision Meeting

As with formal capability meetings and formal review meetings, at least five working days' notice will be given, and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work colleague or trade union representative.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the Capability Procedure will end. If performance remains unsatisfactory, a decision, or recommendation to the Board of Trustees, will be made that the employee should be dismissed or required to cease working at the school.

The employee 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 and their right of appeal.

Decision to dismiss

The power to dismiss staff in this school rests with the Board of Trustees.

Dismissal

Once the decision to dismiss has been taken, the Board of Trustees will dismiss the employee with notice,

Appeal

If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.

The appeal will be dealt with impartially and by managers or Trustees who have not previously been involved in the case. Where this is not possible Trustees from different schools should be used in the appeal.

The employee will be informed in writing of the results of the appeal hearing as soon as possible.

The decision of the appeals panel is final.

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Board of Trustees to quality-assure the operation and effectiveness of the capability procedures. An independent HR advisor would review all processes and procedures to monitor consistency.

Consistency of Treatment and Fairness

The Board of Trustees is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The governance board is aware of the guidance on the Equality Act issued by the Department for Education.

Definitions

Unless indicated otherwise, all references to “employee” include the Headteacher.

Delegation

Normal rules apply in respect of the delegation of functions by the Board of Trustees and Headteacher.

Grievances

Where an employee raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school’s absence policy and will be referred if appropriate to the occupational health service to assess the employee’s health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

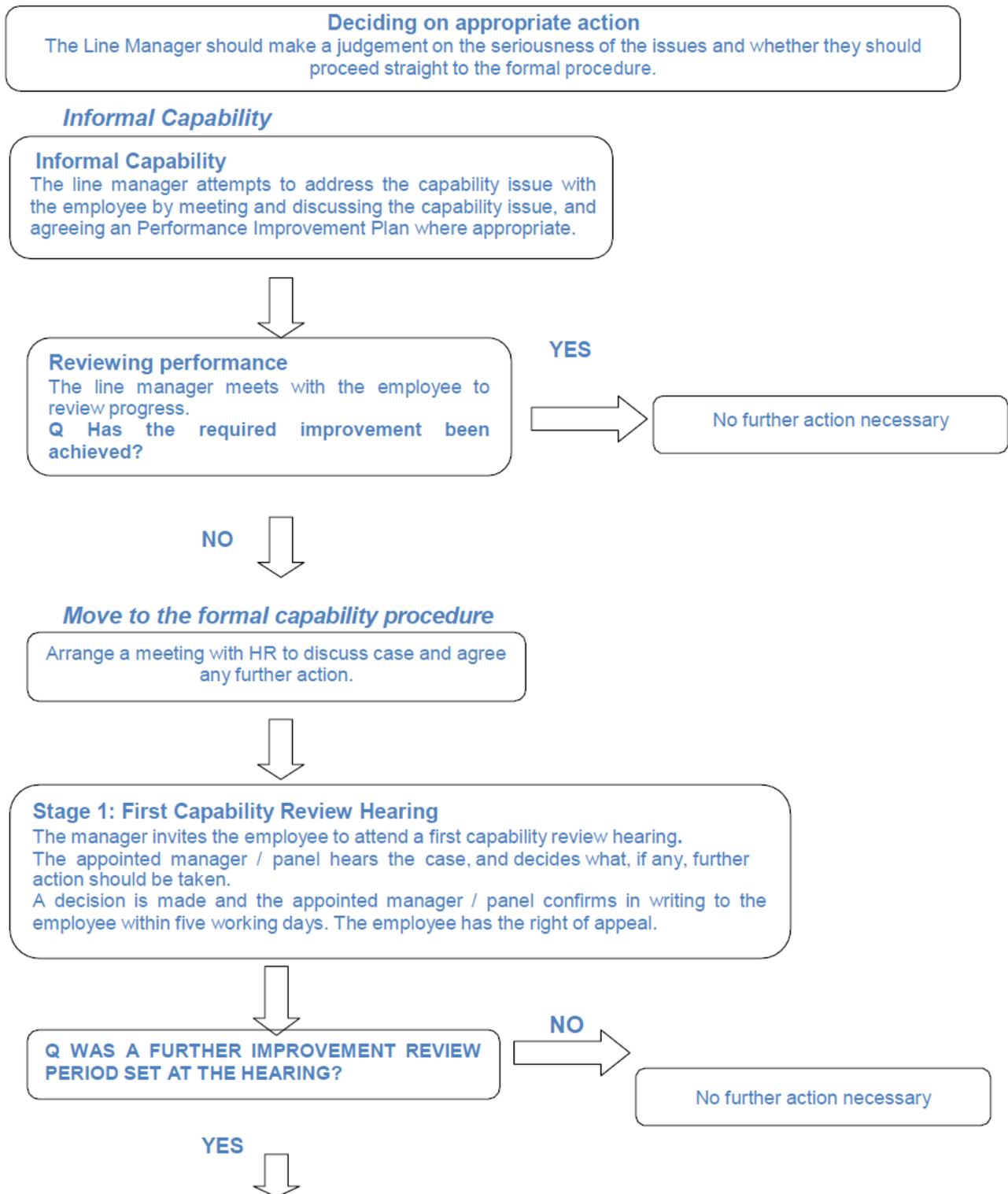
Newly Qualified Teachers (NQTs)

Newly Qualified Teachers who are not meeting the core standards or making satisfactory progress towards them will develop with the Induction Tutor a detailed action plan. The school will increase the support necessary to implement the action plan within the available resources within the school. As appropriate, the Appropriate Body will be involved to ensure the action plan is successfully implemented.

If the NQT continues to cause concern, advice will be sought from the Appropriate Body and the schools capability procedures may be implemented. The school and NQT may also come to a mutual agreement to end the NQT's employment at the school.

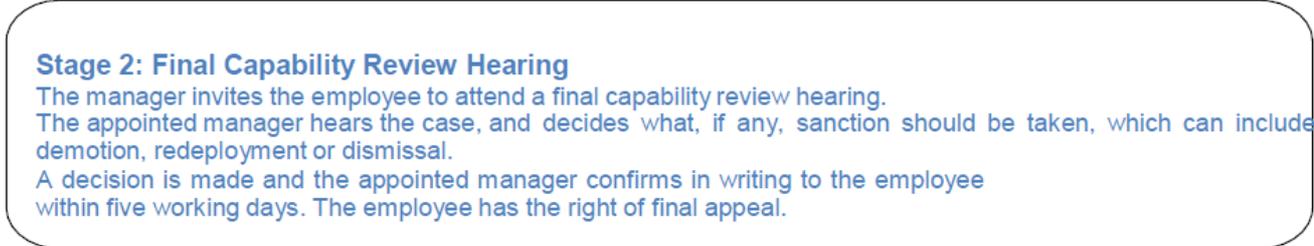
See NQT Policy for further information.

Flowchart of the Procedure





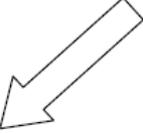
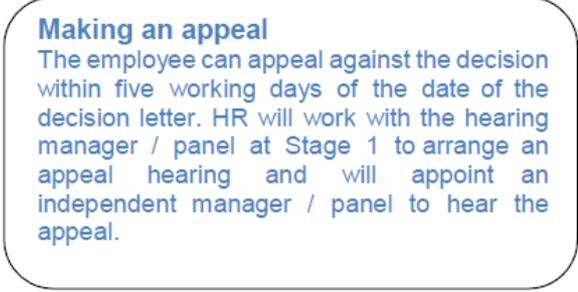
NO ↓



Appeal



YES ↓



YES ↓

