# SOUTH CHARNWOOD HIGH SCHOOL



***'encouraging excellence, valuing people'***

# CAPABILITY POLICY

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# Contents

1. Aims ..... Page 3

2. Legislation and guidance ..... Page 3

3. Definitions ..... Page 3

4. Roles and Responsibilities ..... Page 3

5. Informal Capability - Stage 1..... Page 3

6. Formal Capability Meeting - Stage 2 ..... Page 4

7. Formal Review Meeting - Stage 2 ..... Page 6

8. Final Review Meeting - Stage 3 ..... Page 7

9. Capability Hearing - Stage 4 ..... Page 8

10. Dismissal ..... Page 9

11. Right to Appeal ..... Page 9

12. Confidentiality ..... Page 9

13. Consistency of treatment and fairness ..... Page 9

14. Sickness Absence during Review Period ..... Page 9

15. Links with other policies ..... Page10

Appendix 1 Capability action plan template ..... Page11

Appendix 2 Capability Procedure Flowchart ..... Page12

# 1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

# 2. Legislation and guidance

This policy is based on the Department for Education's model policy and guidance, and the Acas code of practice on disciplinary and grievance procedures.

When carrying out capability procedures, we will ensure we abide by the Equality Act 2010.

This policy also complies with our funding agreement and articles of association.

# 3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

Throughout this policy, unless indicated otherwise, all references to staff includes:

- the Headteacher (when they are the individual being appraised),
- teaching staff,
- classroom based support staff,
- associate staff - non-classroom based support staff, including Subject Technicians, Librarian, Administrative, Lunchtime Supervisors, Site Staff, and the Canteen Team (Catering manager, Cook Supervisor, Cook and Catering Assistant).

# 4. Roles and responsibilities

Where the member of staff subject to the procedure is the Headteacher, the Chair of Trustees will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the Headteacher, the Headteacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

# 5. Informal Capability - Stage 1

5.1 Performance is monitored on a day-to-day basis by line managers. Formal capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered. Evidence of this will be available before the process begins.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

5.2 Lack of capability may be seen in relation to separate tasks or as a pattern covering most or all of an employee's duties. It should be assessed with reference to the performance and attendance that would normally be expected from a competent employee.

5.3 Evidence of lack of capability could include:

- a failure to meet agreed standards of performance in the job description,
- poorly finished work,
- complaints from colleagues or parents about employee's performance
- low work rate or failure to complete tasks,
- non-attendance or poor attendance.
- inability to adapt to new ways of working, the working environment or personal problems.

5.5 Minor issues relating to capability shall be raised, discussed and monitored informally, as detailed in the school's performance management policy (section 6.1) and may include:

- Meeting(s) with the employee to provide them with clear written feedback about the nature and seriousness of the concerns about their performance and allow the employee the opportunity to comment on and discuss these concerns;
- The implementation of an improvement plan including targets for improvement alongside a programme of support (e.g. coaching, training or mentoring);
- The setting of a review period (the length and duration of the review period will vary for each case but will usually be between 4 and 8 weeks). The employee must also have been informed that where satisfactory improvement in performance is not achieved by the end of the review period, this may result in formal action being taken in line with the Capability policy.
- During this review period the employee will have been given regular feedback on their progress and amendments will have been made to the support programme as required.

5.6 At the end of the review period, a further meeting will take place. An employee who has not achieved the required improvements at this point, will be advised that they will now be managed in line with the formal capability procedure.

## 6. Formal Capability Meeting - Stage 2

6.1 Notification of a formal capability meeting should not come as a surprise to the staff member concerned, as they will already have been receiving informal support to improve their performance.

The employee should be informed in writing of the requirement to attend the formal capability meeting, giving at least 5 working days' notice and will explain:

- The concerns about performance and possible consequences
- Any written evidence

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

6.2 The formal capability meeting should be held on a day and time when the employee normally works so that it does not interfere with childcare or other commitments.

6.3 It will be conducted by the Headteacher or another member of the leadership team. If the member of staff subject to the formal capability meeting is the Headteacher, the Chair of Trustees will conduct the meeting.

6.4 The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations. Notes should be taken at this meeting.

6.5 The person conducting the meeting should:

- Identify which standards are not being met (using specific examples of work as necessary) and give clear guidance on the standard of improved performance needed
- Ask the employee to give their explanation as to any reasons why their current performance is not meeting expectations and explore any factors that may be having an impact (e.g. underlying health problem, a significant life event etc);
- Explore what support or assistance can be provided to ensure that the employee is able to improve their performance (e.g. coaching, shadowing, formal training);
- Agree how the employee's performance might be improved, which could include actions by either or both parties.

6.6 Based upon all of the information presented at the meeting the possible outcomes are:

a) There are insufficient grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the appraisal process.

b) An adjournment is necessary for further investigation, or if more time is needed to consider additional information presented.

c) There are capability issues that still need to be addressed, which may warrant a First Written Warning to remain on file for 6 months.

If outcome c) is followed, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the Teachers' Standards or other relevant standards, career stage expectations and/or job description
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Draw up a formal written improvement plan (Appendix 1) or review the support plan used in the informal stage which will be put in place to support the member of staff and explain how performance will be monitored and reviewed.
- Agree the date and time of the Formal Review Meeting. It is also recommended to hold at least one mid-review meeting. The date and time of this meeting should also be agreed with the member of staff.
- Consider issuing a written warning
- Warn the staff member that failure to improve within this timetable could lead to dismissal.

6.7 After the Formal Capability Meeting, the staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the formal warning

6.8 A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting.

The duration of the review period will vary depending on the circumstances of the case, but generally will be between 4-8 weeks. A mid review meeting will be agreed.

The member of staff will be invited to a formal review meeting at the end of the review period.

## 7. Formal review meeting - Stage 2

7.1 A Formal Review Meeting will be held at the end of the monitoring & review period. The purpose of this meeting is to review the formal improvement plan that was agreed at the Formal Capability Meeting and to assess if there has been an improvement in the employee's performance.

7.2 The employee should be informed in writing of the requirement to attend the Formal Review Meeting giving at least 5 working days' notice and this will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

7.3 A copy of the improvement plan agreed at the Formal Capability Meeting should also be included. The meeting should be held on a day and time when the employee normally works so that it does not interfere with childcare or other commitments. The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

7.4 The potential outcomes of the meeting are:

a) If the employee has made sufficient improvement, the capability procedure may cease and the informal monitoring will restart. However, if the improvement is not sustained within 12 months then capability procedures may recommence at the Formal Review Meeting stage of this policy;

b) If some improvement has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period (generally, between 4 – 8 weeks). In the majority of cases it will be appropriate to extend the review period just once;

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. The member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal.

d) The employee will be informed in writing of the outcome of the meeting, and their right of appeal against the warning. A final formal improvement plan (4-8

weeks) and further review period will be agreed and a Final Review Meeting will be set.

7.5 If the decision is made to progress to a Final Review Meeting, it is recommended that the date and time of this meeting is agreed with the employee (and their representative) at the Formal Review Meeting to ensure availability of all parties. It is also recommended to hold at least one mid-review meeting. The date and time of this meeting(s) should also be agreed with the employee.

7.6 After the Formal Review Meeting, the staff member will be sent Formal Review meeting notes. If a final written warning has been issued, the staff member will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal.

They will also receive:

- A written record of the bullet points above
- A copy of the Final Formal Improvement plan
- Information about the further monitoring and review period
- Information about the procedure and time limits for appealing against the final written warning
- The date and time of the Final Review meeting

## 8. Final Review meeting - Stage 3

8.1 The Final Review Meeting will be held at the end of the final review period. The purpose of this meeting is to review the final formal improvement plan that was agreed at the Formal Review Meeting and to assess if there has been an improvement in the employee's performance.

8.2 The meeting should be held on a day and time when the employee normally works so that it does not interfere with childcare or other commitments. Notes should be taken at the meeting.

8.3 The employee should be informed in writing of the requirement to attend the Final Review meeting giving at least 5 working days' notice and will explain:

- The time and place of the meeting
- A copy of the Final Improvement Plan agreed at the Formal Review Meeting should also be included
- That the staff member has the right to be accompanied by a work colleague or trade union representative

8.4 The potential outcomes of the meeting are:

a) If the employee has made sufficient improvement, the capability procedure may cease and the informal monitoring will restart. However, if the improvement is not sustained within 12 months then the capability process will recommence at the Final Review Meeting stage of this policy;

b) If the employee's performance does not improve to a sufficient standard, a recommendation to the board of trustees will be made that the staff member should be dismissed or required to cease working at the school.

The employee will be advised that a capability hearing will be convened to consider the case and that a recommendation has been made to dismiss. The employee should receive

written confirmation of the outcome of the meeting, a copy of the notes and their right of appeal.

## 9. Capability Hearing - Stage 4

9.1 If the employee fails to make sufficient improvement by the Final Review Meeting then a Capability Hearing will be convened to consider the case.

9.2 A Capability Hearing panel will be appointed consisting of at least three trustees.

9.3 The hearing should be held on a day and time when the employee normally works so that it does not interfere with childcare or other commitments. Whenever possible the date should be arranged in consultation with the employee and their representative.

9.4 The employee should be informed in writing of the requirement to attend the Capability Hearing giving at least 10 working days' notice and copies of any paperwork that will be used at the hearing should be enclosed. This should include:

- Brief details of the employee's role and their employment with the school (include a copy of the employee's job description);
- Specific examples of work where the required standard has not been met;
- Copies of improvement plans;
- Copy of final written warning;
- Notes of meetings;
- Letters confirming the outcome of meetings;
- How the employee's performance compares with others (if applicable).
- That the staff member has the right to be accompanied by a work colleague or trade union representative

9.5 The letter to the employee must also request that if they intend to refer to any documentation at the hearing, a copy of this must be sent to the panel or delegated person at least 3 working days before the date of the hearing. The letter will also state that a potential outcome of the hearing is dismissal.

9.5 The potential outcomes of the Capability Hearing are:

a) The employee's level of performance is acceptable. The capability procedure will therefore cease and the informal monitoring will restart. However, if the improvement is not sustained within 12 months then the capability process will recommence at the Capability Hearing stage of this policy;

b) The employee's level of performance is not acceptable. If the panel is satisfied that the employee has been given every opportunity to improve their performance but the required standard has still not been reached, they will dismiss the employee with notice.

9.6 The outcome of the hearing will be confirmed by letter as soon as possible. If the employee has been dismissed, then the letter should include:

- The reason(s) for the dismissal
- The date on which the employment contract will end
- The appropriate period of notice
- Details of the employee's right to appeal against the decision.
- A copy of the notes from the hearing should also be provided.

## 10 Dismissal

Board of Trustees has the power to dismiss staff or require staff to no longer work at the school.

## 11. Failure to attend a meeting

Where an employee or their representative is unable to attend a formal meeting, a new date should be arranged within 5 working days of the original meeting/hearing.

If the employee fails to attend the rearranged meeting/hearing without there being exceptional circumstances, the meeting/hearing will go ahead in their absence.

## 12. Right to Appeal

Appeals will be held in line with the school's Appeal Policy.
An employee wishing to appeal against a decision to impose a sanction must do so within 5 working days of receiving their outcome letter setting out the grounds for appeal.

## 13. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and the board of trustees to quality assure the operation and effectiveness of the system.

## 14. 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 where these are deemed either necessary or appropriate.

The board of trustees is aware of the guidance and provisions of the Equality Act 2010.

# 15. Sickness Absence during Review Period

If an employee is off sick during any of the review periods, depending on the reason given for their absence and the duration, the school should consider a referral to Occupational Health. If the reason given is work related stress, it is recommended that an occupational health referral needs to be done immediately. If the duration of sickness becomes long term, it will usually be necessary to extend the review period to compensate for this. The employee's absence should also be managed under the Attendance Management Policy.

In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness. For example, where an employee has completed 6 or 7 weeks of an 8-week improvement plan before going off sick and had failed to demonstrate the required improvements during that time, then it would be appropriate to consider progressing to the next stage (i.e. issuing a final warning, proceeding to a hearing, etc.).

In cases where an employee is being managed under both the capability and attendance management policies it would be appropriate, wherever possible, to address both of these issues as part of the same meeting.

A suggested format for the meeting is as follows:

- Introduce those present and confirm that the meeting will address both attendance management and capability issues. The first part of the meeting will focus on the employee's attendance and the second part of the meeting will focus on the capability issues.

Part One: Attendance Management

- Follow the format of the meeting as per the relevant stage of the Attendance Management Policy (and relevant guidance document).
- At the end of this part of the meeting it may be appropriate to take a short adjournment before commencing the capability discussion.

Part Two: Capability

- Confirm that the discussion will now focus on the capability issues.
- Follow the format of the meeting as per the relevant stage of the Capability Policy and information available in this guidance.

# 16. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Staff performance management and appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives
- Early career teacher induction
- Appeals
- Staff Attendance Management

# Appendix 1: Capability action plan template

This template can be used as part of the process of supporting a member of staff who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

| NAME OF STAFF MEMBER | NAME OF APPRAISER | DATE OF MEETING |
|---|---|---|
| | | |

| OBJECTIVE 1: | | |
|---|---|---|
| Professional standard(s) that the objective relates to | Success criteria | Evidence to be used to assess progress |
| | | |
| Support/resources to be provided | Monitoring arrangements | Review date |
| | | |

## Appendix 2: Capability Procedure Flowchart

