Wolverdene Special School
Capability Policy 2026

Produced by: Current Version	Manual of Personnel Practice (MOPP) V3.1 – 08 April 2026
Approved by School: Headteacher: Nathalie Akhmatova Date: 9th July 2026	Signature: 
Approved by Governing body: Chair: Jo Lloyd Date: 9th July 2026	Signature: 
This policy will be reviewed annually. This policy will be due for review in July 2027	

Purpose

1. This school expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. If a performance concern is identified, this should be addressed early on to help the employee to improve. The school will work with an employee to support the employee to achieve the required standards of performance.
2. The School recognises there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge, experience and /or the employee may not demonstrate the appropriate behaviours.
3. This Policy explains how the School will manage an employee who is not performing to the required standards of their role.
4. The Capability Policy is non-contractual and does not form part of any employee's terms and conditions.

Policy Outcomes

5. The intended outcomes of this policy are to:

    - ensure the employee is aware of any performance concerns
    - support the employee to perform successfully in their role
    - manage unsatisfactory performance positively
    - provide a framework for managing unsatisfactory performance
    - support a culture of high performance within the school to facilitate school improvement and improve outcomes for children

Scope

6. This policy applies to:

   - Teachers including leadership, upper pay range, main pay range and unqualified teachers
   - Support staff

   For the purpose of this policy, the above staff groups are referred to as employees.

7. This policy does not apply to:

   - Teachers on contract for less than one term
   - Volunteers
   - Contractors
   - Agency workers
   - Casuals

8. Employees that have been subject to a TUPE into the School may be excluded from this policy where the employee is subject to express contractual terms and conditions of employment covering appraisal / performance management/ capability. In such cases, the employee should refer to their own contractual policies and procedures. Otherwise, the employee will be subject to this policy.

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Policy Stages

9. The Headteacher/Senior Manager/HAP must manage the employee's performance and determine when it is appropriate to take action under this policy.

10. For employees with less than two years' continuous service, the shortened process in Appendix 1 must be used.

11. For employees with more than two years' continuous service, the possible stages are:

    - Management Discussion (which may result in Structured Managerial Support) - please refer to the Appraisal (Performance Management) Policy
    - Formal Stage One - may result in a formal warning
    - Formal Stage Two - may result in dismissal

12. The employee has the right to appeal against a decision at a formal meeting.

13. **Gross incompetence** - Any possibility of gross incompetence will immediately be investigated and could result in summary dismissal, this is dismissal without notice. An employee could be suspended or put on alternative duties while the matter is being investigated.

How to use this document

14. This policy applies where there is unsatisfactory performance due to a lack of skill, knowledge, experience, or aptitude which continues after support has been provided under the Appraisal (Performance Management) policy, or when a performance concern is serious and needs to be addressed formally immediately.

15. If an employee has a disability as defined by the Equality Act 2010, the Headteacher/Senior Manager/HAP must refer to the Reasonable Adjustments How to Guide before using this policy.

16. Key definitions are provided in Appendix 6

17. This policy uses 'must' to set out actions that the Headteacher/Senior Manager/HAP or employees must always take. This policy uses 'should' to set out actions that the Headteacher/senior manager/HAP or employees should take unless there is a good reason not to.

18. Check this is the correct Policy to use (see Related Documents). Possible alternatives are:

    - Appraisal (Performance Management) Policy – for an employee's day to day appraisal (performance management), as part of the annual appraisal (performance management) cycle. For the majority of cases, it will be appropriate for the Headteacher/senior manager/HAP to have held a Management Discussion and provided Structured Managerial Support during an Improvement Period, before transitioning to the Capability Policy if performance does not improve.

- Disciplinary Policy and How to Guide - conduct or behaviour which is considered to be wilful, negligent or a breach of the school's Code of Conduct.
- Managing Sickness Absence Policy and How to Guide – where sickness triggers have been met,
- Reasonable Adjustments How to Guide – where the employee has a disability that is causing a disadvantage.
- Where an employee has concern(s) about a decision or action taken when applying the policy: Discuss the concern with the manager. If matters are related - use the meetings and appeals process within the policy. If the matters are unrelated - manage the unsatisfactory performance under this policy and manage the workplace issue under the Resolving Workplace Issues Policy; Or, in certain cases, action under the Capability Policy may be paused to address the workplace concern first and then continue with the capability process.

19. The Headteacher/Senior Manager/HAP is required to make decisions that are both fair and reasonable.

    - Fairness in decision-making means that while the Headteacher/Senior Manager/HAP have a process to follow that provides consistency, there will also be times when the Headteacher/Senior Manager/HAP must use their judgement. The Headteacher/Senior Manager/HAP need to make decisions by looking at all the information and making choices based on their knowledge and the individual circumstances of the situation.
    - Reasonable means that the Headteacher/Senior Manager/HAP's responses and actions should be appropriate and proportionate to the situation.
        - Appropriate: suitable for the specific circumstances the Headteacher/Senior Manager/HAP is dealing with.
        - Proportionate: matching the severity or importance of the situation, not overreacting or underreacting.

    - The Headteacher/Senior Manager/HAP should be able to explain the reasons for their decisions to the employee.

20. The time periods in this policy will also apply to part-time employees.

21. Responsibility for decision-making within this policy rests with the headteacher/ senior manager/ Headteacher Appraisal Panel (HAP). If the governing body has delegated to the headteacher the power to dismiss, the headteacher will not normally be able to fulfil that role where the headteacher has had substantial involvement in the earlier stages of the policy.

22. Where this policy is used in relation to headteacher poor performance, the HAP will undertake the role of headteacher/senior manager. In such cases, an additional professional adviser from the school's School Improvement provider will be present, at any stage, to provide governors with professional advice.

23. If unsure which policy to use, please contact Education People Services.

Key information to know before getting started

Considerations

24. The Headteacher/Senior Manager/HAP must consider whether to use the Capability Policy if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may also not demonstrate the appropriate behaviours required.

25. There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to:

- any system faults a manager is not aware of
- insufficient skills, knowledge and/ or experience
- the employee not receiving sufficient training and support
- a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent
- a pregnancy related illness
- fertility or related condition
- gender reassignment
- a recent bereavement
- an injury sustained on duty whilst performing normal duties
- ongoing medical problems resulting from a previous injury in the execution of duty
- domestic abuse
- caring responsibilities
- menopause
- a lack of motivation in the role that could be due to several reasons

26. There may be exceptional circumstances when the manager and/ or employee anticipate a long-term capability concern. This may happen due to the employee's health or a disability. In these circumstances it is unlikely that the employee will achieve the required level of performance. Consideration must be given to whether reasonable adjustments are appropriate. If an employee has a disability as defined by the Equality Act 2010, the manager should seek advice from Education People Services.

27. The employee will not normally be permitted to raise a grievance (under the Resolving Workplace Issues Policy) related to any action taken, or contemplated, under this policy. Such grievances will normally be managed within the formal meeting and/ or appeal stage.

28. Prior to the implementation of this policy, the Headteacher/senior manager/HAP will normally have held a Management Discussion under the Appraisal (Performance Management) policy and put in place Structured Managerial Support during an Improvement Period. This demonstrates that reasonable efforts have been made to identify performance concerns, discuss the concerns with the employee and, as

appropriate, provide support designed to help the employee achieve the required standards.

29. This policy aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:

- from within the school;
- through accessing expertise in another school;
- via the local authority's advisory services;
- from other expert sources external to the school;
- through training courses or events.

How to distinguish unsatisfactory performance and misconduct

30. The Headteacher/Senior Manager/HAP must consider whether it is appropriate to use the Capability Policy. In some circumstances it may be more appropriate to apply the Disciplinary Policy.

31. To help decide which policy to apply, the Headteacher/Senior Manager/HAP will need to consider the following:

- does the employee have the necessary skills?
- has the employee completed relevant training to develop the necessary skills?
- does the employee have the necessary knowledge for the role?
- has the employee previously performed to the required standards?

32. If the employee does not have the necessary skills, knowledge or experience, and additional training and/ or support could help the employee improve the Headteacher/Senior Manager/HAP should apply the Appraisal (Performance Management) policy. If the required improvement has not been achieved under the Appraisal (Performance Management) policy, support may need to be provided under this Capability Policy.

33. If the Headteacher/Senior Manager/HAP considers that an employee's behaviour or conduct is deemed to be willful or negligent, it will be appropriate to apply the Disciplinary Policy.

34. Where an employee willfully and unreasonably refuses to co-operate with the application of the Capability Policy, the matter will be dealt with under the Disciplinary Policy.

35. Examples of unsatisfactory performance and gross incompetence are included in Appendix 4 and Appendix 5.

Right to be accompanied

36. Employees are actively encouraged to contact their professional association /trade union representative to obtain advice and support at any time.

37. An employee is not usually accompanied at any discussions at the Management Discussion / structured managerial support stage or at review meetings. There may be circumstances, such as a reasonable adjustment when the employee asks to be accompanied, and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

38. The employee has the right to be represented/ accompanied at a formal stage meeting or an appeal meeting. This can be by a trade union representative or a work colleague. The trade union representative does not have to be one that is formally recognised by the school.

39. It is the employee's responsibility to:

- arrange their own representative/work colleague
- liaise with their representative/work colleague to attend the formal meeting or appeal meeting
- inform management of the representative/work colleague's details

40. There is no right to legal representation at any stage of this policy.

How to manage anticipated long-term performance concerns related to a disability (Reasonable Adjustments)

41. Where an employee may have a disability (as classified by the Equality Act 2010), the Headteacher/Senior Manager/HAP must refer to the Reasonable Adjustments How to Guide before progressing under the Capability Policy. The Headteacher/Senior Manager/HAP must consider reasonable adjustments as a matter of priority to support an employee with a disability.

42. If, having implemented any reasonable adjustments, the employee is still not meeting the required standards, the following options should be considered, if appropriate:

- an Occupational Health referral (if not already completed to review reasonable adjustments)
- to explore medical redeployment (requires recommendation from Occupational Health)
- to explore ill health retirement (requires recommendation from Occupational Health and only relevant if the employee is a member of a pension scheme)
- use the Managing Sickness Absence policy if the employee is absent due to sickness.

Formal action concerning a Professional association/trade union representative

43. Where the performance concern relates to a professional association/trade union representative, the Headteacher/Senior Manager/HAP must inform Education People Services before taking formal action.

Safeguarding

44. If there is any Safeguarding concern, see Safeguarding

Patterns/history of unsatisfactory performance, live warnings and expired warnings

45. There may be a history of concerns about an employee's performance. Previous formal warnings or Management Discussions/ Structured Managerial Support should be on record. There may be other examples of unsatisfactory performance.

46. If the Headteacher/Senior Manager/HAP has previously set an Improvement Period which resulted in improved performance, but performance then declines, it may be reasonable to progress straight to a Formal Stage One meeting without setting a further Improvement Period under the Appraisal (Performance Management) policy. These circumstances include:

    - where the employee has already been set an Improvement Period in the last 24 months
    - where the employee has received a Formal Warning, but this has expired within the last 24 months.

47. An expired Stage One warning cannot be used to mean a further concern is taken directly to Formal Stage two.

48. While a Formal Stage One warning is live and a new and/or further performance concern arises, the new matter must be discussed with the employee. It may be reasonable to progress to a Formal Stage Two meeting.

49. Expired warnings may also be taken into consideration by the chair of a meeting when deciding the appropriate length of a Formal Warning. This means that the length of the Formal Warning may be longer than 12 months (up to 24 months).

Formal Stages

50. The Headteacher/Senior Manager/HAP should contact Education People Services for advice prior to commencing any formal stages.

51. It is expected that the Headteacher/Senior Manager/HAP will have had a Management Discussion and provided Structured Managerial Support under the Appraisal (Performance Management) policy prior to progressing to a formal stage under this Capability policy.

52. In some circumstances, it may be appropriate to start at the formal stage without a documented Management Discussion/ Structured Managerial Support under the Appraisal

(Performance Management) policy; however, the employee must already be fully aware of the performance concern and that it is to be considered formally.

53. In some circumstances, if there is evidence of serious capability concerns, it may be appropriate to move directly to formal stage two. See definition of gross incompetence.

Formal Stage One

54. Progression to a Formal Stage One meeting normally occurs if:

- the requirements of the Improvement Period (provided under the Appraisal (Performance Management) Policy) will not be met
- the requirements of the Improvement Period (provided under the Appraisal (Performance Management) Policy) have not been met
- an initial improvement is not maintained for 24 months
- the employee has received a Formal Warning that has expired within the last 24 months.

55. In all circumstances, an employee should not be invited to a formal Stage One meeting unless the employee has been told of the performance concerns beforehand.

56. The Headteacher/Senior Manager/HAP should produce a proportionate and impartial management report identifying the performance concerns and setting out in chronological order any actions/support that has already taken place. A template report is available in the Manual of People Practice. The report should be supported by appendices including:

- records from Management Discussions

57. details of the structured managerial support that has been provided

- training and development records
- reports from Occupational Health, if applicable
- their role profile and local task list (Support staff roles) and job descriptions and person specifications (Teaching roles)
- Career expectations framework and associated teachers' standards guidance (Teaching roles only)

58. If the employee has a disability that impacts on their performance, the Reasonable Adjustments How to Guide must have been followed and information on actions taken under the Reasonable Adjustments How to Guide included in the Performance report.

59. The employee has the right to be accompanied at a formal stage meeting (see Right to be accompanied).

60. See Formal meeting procedure (Appendix 2)

Potential outcomes of a Formal Stage One meeting

61. The Chair must decide on an outcome, using their judgement in the circumstances.

62. A Formal Stage One meeting is expected to include one or more of the following outcomes:

- no further action as the Headteacher/Senior Manager/HAP determine there is no on-going performance concern
- continue Structured Managerial Support and reviews by extending the Improvement Period set under the Management Discussion stage of the Appraisal (Performance Management) Policy, this may include providing additional support, training or workplace options such as considering alternative working patterns or changes to the role. Where appropriate, an action plan is detailed that sets out actions that will be taken by the Headteacher/Senior Manager/HAP and the employee (see 'Action Plan')
- seek input from Occupational Health where appropriate
- consider further reasonable adjustments if the employee has a disability and issues have come to light during the meeting
- a specific Review Date is set that relates to relevant circumstances, examples include completion of agreed training, receipt of medical advice
- issue a Formal Warning (and therefore an Improvement Period for the same period, and an Action Plan where appropriate)
- a Formal Warning will normally last ('remain live') for a period of 12 months but can be extended to up to 24 months where appropriate
- the Chair sets targets for improvement and maintaining performance (while the Improvement Period will last for the length of the formal warning, the employee's improvement must be achieved in line within the timeframe/s set by the chair and then maintained for the entire duration of the formal warning)
- the dates of review meetings are organised.

Issuing a Formal Warning

63. The purpose of a warning is to formally warn the employee that their performance is not at the required standard. The warning that is issued to the employee must:

- set targets to both improve and sustain their performance, which must be met during the Improvement Period
- state how long the Formal Warning and therefore Improvement Period will last (see Length of Warning)
- set an expectation that the Headteacher/Senior Manager/HAP will hold regular review meetings with the employee and set an expected frequency (see 'Review meetings')

- state that if the employee fails to meet the requirements of the Formal Warning, that further action may be taken under Formal Stage Two, of which a potential outcome could be dismissal
- state that the outcome may have an impact on their annual pay progression (see the school's Pay Policy).

64. Where a formal warning is not issued, it must be stated whether there are any on-going actions under the Capability Policy or not. If not, then the outcome letter must confirm that action under the Capability Policy will stop.

65. Where a Formal Warning is issued, it has been determined that the employee's performance is not at an acceptable standard, so the Headteacher/Senior Manager/HAP must recommend withholding any step progression in accordance with the Pay Policy.

66. If a Formal Warning is issued, and the employee meets the required standard of performance, the employee must be given a letter to confirm the Managing Performance (Capability) process has stopped. From that point, their performance will be managed under the Appraisal (Performance Management) policy. The Formal Warning will remain live for the period set, and a formal review should take place before the formal warning ends. However, if the performance concerns return, the manager should refer to the Formal Stage One or Formal Stage Two section of this policy for information on how to progress, depending on whether the formal warning is still live.

Formal warnings for employees on fixed term/temporary contracts

67. If an employee who is on a fixed-term or temporary contract receives a Formal Warning, it doesn't mean their contract has to be extended to cover the warning period. If their contract is set to end during the warning period, the manager should follow the usual process for Ending Fixed-Term or Temporary Contracts.

Length of Warning

68. The Chair of the meeting will decide on the length of a Formal Warning. The length of the Formal Warning is normally 12 months. The Formal Warning period will not be less than 12 months and will be no longer than 24 months.

69. The length of any formal warning depends on:

- the nature of the unsatisfactory performance
- whether there is a belief that the issue may reoccur
- whether a warning at the same stage has been previously issued
- any patterns/ history of unsatisfactory performance

70. The following circumstance may lead to a longer Formal Warning:

- a warning has been previously issued for performance, which has expired within the last 24 months, and/or there is a history or pattern of unsatisfactory performance issues. (see Patterns/History of unsatisfactory Performance)

71. Setting a Formal Warning does not stop further action being taken before the end of the Formal Warning.

72. A formal warning given as part of the application of this policy will lapse at the point when the headteacher/senior manager/HAP decides that an acceptable level of performance has been reached. If performance concerns return within 24 months from the date of such a decision, the headteacher/senior manager/HAP, following consultation with Education People Services (or HIAS in the case of the headteacher), may consider the performance concerns at Formal Stage one, without holding a Management Discussion under the Appraisal (Performance Management) Policy.

Improvement Periods

73. An Improvement Period is a period when an employee must achieve and maintain the required level of performance.

74. An Improvement period is set:

- **Management Discussion** - When an Improvement Period is set as part of a Management Discussion, the Headteacher/Senior Manager/HAP decide how long it will last, and what improvement is required to be achieved and maintained within the period
- **Improvement Period as a stand-alone outcome of a formal meeting** - when an Improvement Period is a stand-alone outcome of a formal meeting, the chair of meeting will decide how long it will last and set out what specific improvement/s are required to be achieved within given timeframe/s and then maintained
- **When a formal warning is given,** an Improvement Period should be set alongside the warning for the same period of time. The Chair will set out what specific improvement/s are required to be achieved within given timeframe/s. The employee must meet these targets in the set timeframe and then maintain the required performance level for the rest of the formal warning period.

75. It is expected that in most cases an employee should be able to demonstrate an improvement in their performance within 6 weeks (half a term). The actual timescale will depend on the nature of the performance issues, the job role and the impact of the unsatisfactory performance on the service provision. Some issues could be resolved within 2 to 4 weeks. Other issues may take 4 to 8 weeks, or longer. The Headteacher/Senior Manager/HAP must use their judgement based on the individual circumstances to decide on how long the Improvement Period is to be, and what improvement is required in this period. If the Headteacher/Senior Manager/HAP is not the line manager, it may be helpful for the line manager to be involved in determining how much time is needed for an improvement to be demonstratable.

76. The following circumstances may lead to a shorter Improvement Period:

- employees with less than two years' continuous service – it is reasonable to set a shorter Improvement Period for employees with a short length of service
- the performance concerns have occurred in quick succession or are a repeating pattern, so it is reasonable to expect the employee to be able to demonstrate the required standard in a shorter period
- the employee is in a critical role and their individual level of performance is having a significant impact on service delivery
- any history of unsatisfactory performance – have there been previous concerns that have been discussed with the employee.

77. The following circumstances may lead to a longer Improvement Period:

- if there is an underlying health condition that is currently being treated, then it may be appropriate to set an Improvement Period that is linked to the treatment. However, the Improvement Period should normally be no longer than 12 weeks
- the reasons for the unsatisfactory performance – are there any other issues that could be impacting on performance?
- whether any workplace changes or reasonable adjustments are required and if so, how long this might take to arrange. The Headteacher/Senior Manager/HAP should act quickly to address any such actions. If the reasonable adjustments are not put in place in a timely manner, the Improvement Period should be adjusted accordingly.

78. The Headteacher/Senior Manager/HAP should be able to explain to the employee how the Improvement Period has been determined. The Headteacher/Senior Manager/HAP should explain that they will support the employee to help them to meet the required standards, but if the employee does not meet the required standards of the role within this time it may result in support being provided under the Capability Policy.

79. Where the Improvement period is set by the chair of the meeting, the chair should be able to explain to the employee how the Improvement Period has been determined. The chair should explain that they will support the employee to help the employee to meet the required standards, but if the employee does not meet the required standards of the role within this time, it may result in progression to the next stage of the policy.

80. If the employee's performance improves as required, the headteacher/senior manager/HAP will meet the employee to tell the employee this. This will be confirmed in writing to the employee and the letter will be placed on the employee's personnel file. The Capability Policy will cease at this point and Performance Management will re-start, under the Appraisal (Performance Management) policy.

Action Plans

81. The chair of the meeting will use their judgement to decide whether an action plan would be helpful to document actions and next steps to support the employee during the Improvement Period. This is likely to depend on the nature of the concerns and reasons for the concerns. A template action plan is available in the Manual of People Practice.

82. The action plan could include:

- a reminder of the targets set for the Improvement Period
- what actions will be taken by the employee
- any actions to be taken by the Headteacher/Senior Manager/HAP– such as arranging specific support, reasonable adjustments, training and/ or guidance
- the timeframes for these actions

83. Working with the employee, the Headteacher/Senior Manager/HAP should agree the action plan, if possible. In all cases the Headteacher/Senior Manager/HAP must share the action plan with the employee and keep a copy for your records.

84. Review the action plan with the employee at regular intervals during the Improvement Period, this could be during scheduled review meetings or at other points linked to the content of the action plan. The action plan should be updated to record improvement attained (or not) and any new issues raised.

Review meetings

85. Regular review meetings should be scheduled throughout the length of the Improvement Period/formal warning period to provide opportunities to:

- review the employee's performance
- review any action plan
- recognise and record improvement
- discuss any other support/ training/ reasonable adjustments that may be relevant
- explore where performance has not improved sufficiently, or the improvement cannot be maintained without additional support, what the reasons are and how they could be resolved
- where performance has improved to the required standard and has been maintained for the required period of time, to agree to decrease the frequency of the review meetings
- if performance has not improved, at the final review meeting determine whether to progress to formal stage two.

86. The frequency of review meetings should reflect a period in which the employee is expected to be able to demonstrate some improvement. This could be every week or fortnight depending on how quickly someone should be able to demonstrate an improvement. The Headteacher/Senior Manager/HAP may decide to set review meetings over a longer period of time if the performance concern relates to an infrequent activity.

87. The Headteacher/Senior Manager/HAP must review the employee's performance at these meetings – recognising any improvement and discussing any areas where performance continues to be below the standards required. Try to establish the reason/s behind the performance issue and explore with the employee any action/s that may resolve the gap between their current performance and what their role requires.

88. Once the employee is maintaining an improvement in performance, together the Headteacher/Senior Manager/HAP and employee can agree to decrease the frequency of the meetings.

89. When the employee's performance has improved as required, this will be confirmed in writing to the employee and the letter will be placed on the employee's personnel file. The Capability Policy will cease at this point and Performance Management will re-start, under the Appraisal (Performance Management) policy. However, the formal warning remains live until its expiry date. For further information, refer to the Patterns/history of unsatisfactory performance, live warnings and expired warnings section of this document.

90. A final review meeting should be held at the end of the Improvement Period where the Headteacher/Senior Manager/HAP will make an assessment of whether:

    - sufficient improvement has been attained and maintained, and no further action is to be taken
    - sufficient improvement has not been attained, or is not being maintained without additional support, and progress to a formal meeting under the next stage of the policy is appropriate
    - in exceptional circumstances, extend the Improvement Period and set further review meetings with another final review.

91. A written record should be made of each discussion. The Headteacher/Senior Manager/HAP should:

    - agree the record with the employee if possible
    - share the record with the employee
    - keep a copy on the employee's personnel file

Specific Review Dates

92. One potential outcome of a formal stage meeting is to set a Specific Review Date. This typically occurs where there is material information that is needed to make an informed

decision, but that information is not available at the meeting. The Chair may set a Specific Review Date for when this information is expected to be available. This is expected to be no longer than 3 months after the formal meeting. The following may be reasons for setting a Specific Review Date:

- advice is expected from Occupational Health
- agreed training is to be completed (also determine if additional time is to be given for the employee to embed their learning)
- an Access to Work assessment is to be undertaken
- any other relevant factor that leads to specific information being available to support a more informed decision.

93. The Headteacher/Senior Manager/HAP should tell the employee that between now and the review date their performance will continue to be discussed and any issues as part of your normal one-to-one meetings.

94. At the review date, the Headteacher/Senior Manager/HAP will meet with the employee and discuss the additional information. Review their performance in light of the new information and their current circumstances.

95. Potential outcomes of the review are:

- no further action under the Capability Policy, any further action (if required) will be taken under the Managing Performance (Appraisal) Policy. See section below entitled Improvement in Performance Achieved for further information.
- Consider progression to the next stage of this policy. Please refer to the relevant section of this policy.
- in exceptional circumstances, set a further specific Review Date that is associated with outstanding information or actions.

96. A written record should be made of each discussion. The Headteacher/Senior Manager/HAP should:

- agree the record with the employee if possible
- share the record with the employee
- keep a copy on the employee's personnel file

Improvement in performance achieved

97. If the teacher's performance improves to the required standard, the manager must meet with the teacher to tell them. The teacher must be given written confirmation, which should be copied to their personnel file (ePF), that Managing Performance (Capability) will stop, and performance management will recommence under Appraisal (Managing Performance).

98. When the employee's performance has improved as required, this will be confirmed in writing to the employee and the letter will be placed on the employee's personnel file. The Capability Policy will cease at this point and Performance Management will re-start, under the Appraisal (Performance Management) policy. However, the formal warning remains live until its expiry date. If improved performance is not maintained, refer to the section below entitled Improvement in performance not maintained.

Improvement in performance not maintained

99. If the improved performance is not maintained when being managed under the Appraisal Policy, then Capability will re-start:

- At Stage One if a Formal Warning has expired within the last 24 months
- At Stage Two if within the period of a live Formal Warning

Formal Stage Two

100. Progression to Formal Stage Two meeting normally occurs if the employee is not able to meet and maintain the standards required of their role while the Stage One Formal Warning is live.

101. Progression to Formal Stage Two means that dismissal is a potential outcome. Where the Headteacher/Senior Manager/HAP considers Stage Two may apply, this should be discussed with the Headteacher.

102. If the employee has a disability, any reasonable adjustments that have been identified must have been implemented. The dismissal of an employee on the grounds of unsatisfactory performance should be a last resort.

103. The Headteacher/Senior Manager/HAP must contact Education People Services before commencing any Formal Stage Two meeting or where the employee has less than two years' service, due to the potential outcome of dismissal.

104. The Headteacher/Senior Manager/HAP are to produce a proportionate and impartial management report identifying the performance concerns and setting out in chronological order any actions/support that has already taken place. The report should be supported by appendices including:

    - records from Management Discussions
    - details of the Structured Managerial Support/ Improvement Period
    - training records
    - reports from Occupational Health if applicable
    - Stage One Management Report (if applicable)
    - Stage One meeting letters (invite and outcome)
    - their role profile and local task list (Support staff roles) and job descriptions and person specifications (Teaching roles)

- Career expectations framework and associated teachers' standards guidance (Teaching roles only)

See Formal meeting procedure (Appendix 2)

Potential Outcomes of a Formal Stage Two meeting

105. The Chair must decide on an outcome, using their judgement in the circumstances. In considering the outcome of the Stage Two meeting, the Chair will take account of any live Stage One warning - this may mean the employee is dismissed.

106. A Formal Stage Two meeting is expected to include one or more of the following outcomes:

- no further action as the panel determines there is no on-going performance concern
- provide additional support, training or workplace options such as considering alternative working patterns or changes to the role
- seek input from Occupational Health if new issues have come to light during the meeting
- consider reasonable adjustments if the employee has a disability and new issues have come to light during the meeting
- a specific Review Date is set that relates to relevant circumstances, examples include completion of agreed training/support, receipt of medical advice
- an Improvement Period is set and, where appropriate, an action plan is agreed that sets out actions that will be taken by the Headteacher/Senior Manager/HAP and the employee (see Action Plans)
- in exceptional circumstances, where a Formal Warning is still live, extend the length of the Formal Warning, set a further Review Date that is associated with outstanding information or actions such as medical advice
- in exceptional circumstances, where a Formal Stage One Warning is still live, extend the period of the Formal Warning
- where the outcome is to extend a Formal Stage One Warning, it has been determined that the employee's performance is not at an acceptable standard, so the Headteacher/Senior Manager/HAP may decide to recommend withholding pay progression. Decisions will be made on a case-by-case basis and the Headteacher/Senior Manager/HAP should refer to the school's pay policy.
- dismissal on the grounds of performance capability with contractual notice.

107. If a Formal Warning is extended, and the employee meets the required standard of performance, the employee must be given a letter to confirm the Managing Performance (Capability) process has stopped. From that point, their performance will be managed under the Appraisal (Performance Management) policy. The Formal Warning will remain live for the period set, and a formal review should take place before the formal warning ends. However, if the performance concerns return, the manager should refer to the Formal Stage

One or Formal Stage Two section of this policy for information on how to progress, depending on whether the formal warning is still live.

108. Where the outcome is dismissal, any sums owing to the School from the employee will normally be deducted from their final pay in accordance with the School Pay Policy and the employee's contract of employment.

Gross Incompetence

109. Gross Incompetence occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role to such an extent that this causes or has caused serious harm or puts others (pupils, colleagues and/ or general public) or the school's reputation and performance at serious risk (for examples of gross incompetence see appendix 5)

110. A decision may be made to suspend the employee pending an investigation. Further details can be found in the Suspension Guidance on the Manual of People Practice.

111. See Formal meeting procedure (Appendix 2)

112. Gross incompetence only applies in exceptional circumstances. The Headteacher/Senior Manager/HAP must seek advice from Education People Services in such cases.

Potential Outcomes of a Gross Incompetence formal meeting:

- a formal warning
- dismissal with contractual notice
- dismissal on the grounds of gross incompetence with immediate effect

Other Policy Requirements

Confidentiality

113. It is expected that all parties involved in the managing performance process will maintain confidentiality as appropriate. This is both within and outside of the school (including social media).

114. If any party does not maintain confidentiality, action may be taken under the Disciplinary Policy.

Referral to Occupational Health & Wellbeing

115. It may be necessary to refer the employee to your Occupational Health provider to obtain medical advice and information. This will help the Headteacher/Senior Manager/HAP to understand:

- the health issues
- the possible impact on the employee's performance

- suggestions, from a medical perspective, on the types of adjustments that may support the employee.

116. For further information and guidance please see the Managing Sickness Absence policy.

Safeguarding

117. The school may take action under the Capability Policy for reasons that relate to a safeguarding concern. The appropriate manager within the school must report the case to the appropriate team below as soon as is practicable, before undertaking any internal investigation:

- the Local Authority Designated Officer (LADO) where it involves children and/or young people.
- the Adult Services Safeguarding Team where it involves vulnerable adults.

118. No investigation can be undertaken until clearance is given in writing from the LADO, Police, or the Adults Safeguarding team, as appropriate. Further advice can be sought from Education People Services.

119. Following assessment by the LADO/Adult Safeguarding team, there may be a referral to police and/or social care, or it may be passed back to the school to conduct an internal employment investigation under the capability policy or disciplinary policy. Where a police or social care investigation is proceeding, no employment process can commence until clearance is given by the relevant authority

120. In some cases, it might be appropriate to consider alternative arrangements, adjusted duties or suspension. Further details can be found on the Suspension Guidance in the Manual of People Practice.

Requirement for the school to pass on information about a teacher's capability to a new employer

121. A Headteacher or teacher may apply for a job with an alternative employer. The employee may have been subject to the Capability Policy within two years prior to starting a job with a new employer. In such cases, the school must provide written details of the concerns, the duration of the proceedings and their outcome.

122. This only applies if the Teacher is/ has applied for a teaching post in a maintained school or an Academy.

123. If a teacher attends a formal meeting, but no formal action is taken, there is no requirement to share details of the meeting with any future employer.

Referrals to professional bodies

124. Some professions are required to be registered with a professional body in order to practice. During, or upon completion of the Capability process, in the following circumstances it may be necessary to make a referral to the relevant body:

- if a dismissal takes place
- where there are concerns about the employee's fitness or competence to practice
- in circumstances where a capability process has not concluded as the employee has resigned, and the potential outcome was dismissal.

125. If a referral is necessary, the school is responsible for initiating and completing it. The school must work in conjunction with Education People Services and the Local Authority Designated Officer (LADO)/Adult Services Safeguarding Team, where appropriate.
126. If the capability concerns relate to an employee who is employed to carry out 'teaching work', the employer may be required make a referral to the Teaching Regulation Agency (TRA). The TRA may take action under their statutory powers.
127. Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that a referral has taken place.

Referrals to the Disclosure and Barring Service

128. If the capability concern(s) or dismissal relates to a safeguarding matter, the employer is required to make a referral to the Disclosure and Barring Service (DBS).
129. Further guidance is available on the Disclosure and Barring Service website.
130. The DBS may take action under their statutory powers.
131. Further guidance is available on the relevant professional body websites.
132. For further advice please contact Education People Services.

Suspension or alternative arrangements

133. Suspension or alternative arrangements are intended as neutral and precautionary acts. They may be considered at any point during the Capability Policy once the potential gross incompetence has been established.
134. Further details can be found in the Suspension Guidance on the Manual of People Practice. Before making a decision about alternative arrangements, adjusted duties and/ or suspension, the appropriate manager must seek advice from Education People Services.

Representation from Education People Services and/ or the local authority

135. The school will have the right to request that an Adviser from Education People Services attends any meetings under Stages 1 or 2 of the Capability Policy, to provide support and advice to the senior manager/headteacher/HAP.

136. Education People Services has the right to attend a meeting held under Stage 2 of the Capability Policy within Hampshire Maintained Schools (other than in Voluntary Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.

Salary - Withholding pay (step) progression

137. If an employee is not meeting the required performance standards of their role and the capability policy applied, annual pay step progression can be withheld according to the Pay Policy and this Policy for the following year.

138. In all cases, the teacher must have been informed that withholding pay progression may be a possible outcome of unsatisfactory performance and application of the capability policy.

139. See Pay Policy for further details.

Redeployment

140. There is no right to redeployment. Employees may apply for alternative roles under the standard recruitment process.

Mutual agreement

141. The contract of employment may be ended by mutual agreement between the employee and the School. A mutual agreement is an alternative approach for the employee rather than attending a formal stage meeting.

142. A mutual agreement is most likely to be reached where an employee's performance means that the employee is unlikely to meet the requirements of their role within a reasonable timescale. The employee must request a mutual agreement if this is their preferred way forward. The manager must only agree to it after approval from the Headteacher

143. A mutual agreement is neither a dismissal nor a resignation. It is a letter setting out an agreed end date of employment, and other related arrangements. It is signed by both parties.

144. A mutual agreement will not normally be entered into with employees that have applied for Ill Health Retirement under the Teachers Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS).

145. The School will not enter into a Mutual Agreement where performance concerns relate to safeguarding.

146. There is no right to appeal a mutual agreement as it is entered into with the consent of both parties. The Headteacher/Senior Manager/HAP should encourage the employee to seek advice from their professional association /trade union representative before requesting the manager to consider a mutual agreement.

147. If the employee requests a mutual agreement, the Headteacher/Senior Manager/HAP must contact Education People Services for further advice.

Further sources of Support

Employees:

148. Queries should be directed to your line manager.

149. **Trade union and Professional Association members** - members can contact their local office to find out about the support available and discuss specific issues.
150. **School staff wellbeing and resilience webpages** – website with tools and resources to support staff in schools at https://www.hants.gov.uk/educationandlearning/schools-resilience

151. Support is also available from Employee Support if the school subscribes to this service. https://www.hants.gov.uk/hampshire-services/occupational-health/schools/employee-support

Managers:

152. For all initial queries, managers can contact the EPS Helpdesk through the Manual of People Practice: https://www.hants.gov.uk/educationandlearning/education-personnel-services/manual/contact-us

153. For schools which subscribe to Hampshire County Council's Occupational Health service, the manager can access the Occupational Health Advice Line. Advice Line can support with any health-related query prior to making a referral or during management of a case. https://www.hants.gov.uk/hampshire-services/occupational-health/schools

Toolkit

154. A number of template documents are provided in the Manual of People Practice including:

- action plan template
- review meetings template
- letter templates
- management report template
- structured managerial support form

Related documents

155. To help with the application of this document it may be useful to read the following:

- Appraisal (Performance Management) Policy
- Resource Pack: Managing Performance Concerns
- Managing Sickness Absence Policy and How to Guide
- Reasonable Adjustments How to Guide

- School Pay Policy
- Disciplinary Policy and How to Guide
- Access to Work How to Guide
- Menopause How to Guide
- Supporting employees with Caring responsibilities How to Guide
- Model Equality Policy
- Domestic Abuse – Supporting Employees How to Guide

Roles and responsibilities

All employees:

- adopting a pro-active approach to induction, general development and continuing professional development
- identifying support that is helpful to their particular development needs
- maintaining the high standards of performance expected of all employees of the school
- applying and complying with the annual appraisal (performance management) cycle/process
- applying and complying with the Capability Policy
- maintaining confidentiality
- arranging their own professional association/ trade union or work colleague to support them, this may include accompanying the employee to a formal meeting. The employee must inform management of any arrangements.

The Headteacher/manager:

- identifying concerns at the earliest opportunity and deciding on appropriate action
- communicating concerns to the employee at the earliest opportunity
- setting clear and achievable performance targets and standards that the employee can work to within their role
- drafting and issuing of letters, reports, and documentation with Education People Services support as necessary
- arranging meetings as necessary
- considering adjustments and implementing them where reasonable to do so
- signposting employees to sources of support
- informing their line manager about any performance concerns they are progressing with a member of their team; the Headteacher is to be informed of any matters that are progressing to a formal stage
- informing Education People Services of all performance concerns that may potentially be managed under this policy if there has not been previous involvement in the case
- informing Education People Services of all Formal Stage Two meetings or a formal meeting under appendix 1 (employees with less than 2 years' continuous service) once the requirement for this meeting is identified

- contacting Education People Services if there is a possibility that any performance concern amounts to gross incompetence
- maintaining regular contact with the employee during the process, particularly during suspension or alternative arrangements
- ensuring continuity in the management of performance in the event of a change of line manager
- suspension of IT accounts and identity badges as appropriate
- ensuring the school completes the appropriate leaver notification and completing the other leaver requirements if a dismissal takes place or the employee resigns during the process or leaves under a mutual agreement
- deleting records from emails or destroying locally held copies of documents once they are saved on the employee's file.

Education People **Services:**

- Advising on policy application and best practice
- Supporting with case management
- Advising on the completion of letters, reports and relevant documentation
- Attending meetings where appropriate in an advisory capacity
- If the employee is dismissed, and the IBC is the School's payroll provider, complete the Leaver Notification and Termination Payments form as appropriate.
- Education People Services does not perform a decision-making role. Their function is to provide advice on legal issues, correct application of the policy and procedural matters.

Occupational Health provider:

- providing medical advice to assist managers in deciding whether to make a referral to Occupational Health/a medical practitioner
- receiving referrals from management and reviewing employees as appropriate
- requesting medical information
- making recommendations in line with the needs of the School to management so they can make informed decisions.

The professional association, trade union representative or work colleague:

- advising/supporting their member/colleague/manager
- attending arranged formal meetings and/or appeal meetings. If this is not possible, then arrangements should be made so that formal meetings and/or appeal meetings are covered by an alternative representative and are not delayed
- making representations, advocating and mitigating on behalf of the employee, submitting papers if appropriate, asking questions and addressing a meeting/hearing on behalf of the employee.
- they may not answer questions on behalf of the employee

Appendix 1: Managing Capability for employees with less than two years' continuous service

1. This appendix will be used for addressing unsatisfactory performance if the employee has less than 2 years' continuous service.

Policy stages

2. The possible stages are:

    - Management Discussion (which may result in Structured Managerial Support) - please refer to the Appraisal (Performance Management) Policy)
    - Formal Stage Two – may result in dismissal

3. In exceptional circumstances, it may be appropriate to move into the Capability Policy without having provided a period of Structured Managerial Support. The manager must seek advice from Education People Services in such cases.

4. The employee must be given a reasonable period of time to achieve the required improvement before moving to the Capability Policy.

Formal meeting

5. The principles of the Formal meeting procedure will apply.

Possible outcomes

The possible outcomes for employees with less than two years' service are:

- no further action as there is no on-going performance concern
- provide additional support, training or workplace options such as considering alternative working patterns or changes to the role
- seek input from Occupational Health if appropriate
- consider reasonable adjustments if the employee has a disability and new issues have come to light
- a specific Review Date is set that relates to relevant circumstances, examples include completion of agreed training, receipt of medical advice
- a Formal Warning (and therefore an Improvement Period for the same period, and an Action Plan where appropriate)
    - a Formal Warning will normally last for ('remain live') for a period of 12 months
    - the Chair sets targets for improvement and maintaining performance (while an Improvement Period will last for the length of any formal warning, the employee's improvement must be achieved in line within the timeframe/s set by the chair and then maintained for the entire duration of the formal warning)

- the dates of review meetings are organised (see 'Review Meetings')

- dismissal on the grounds of performance capability with contractual notice.

6. Where a formal warning is not issued, it must be stated whether any on-going actions are under the Capability Policy or not. If not, then the outcome letter must confirm that the Capability process will stop.

7. If a Formal Warning is issued, and the employee meets the required standard of performance, the employee must be given a letter to confirm the Managing Performance (Capability) process has stopped. From that point, their performance will be managed under the Appraisal (Performance Management) policy. The Formal Warning will remain live for the period set, and a formal review should take place before the formal warning ends. However, if the performance concerns return, the manager should refer to the Formal Stage One or Formal Stage Two section of this policy for information on how to progress, depending on whether the formal warning is still live.

8. If a dismissal takes place, the Headteacher/Senior Manager/HAP is responsible for:

   - cancelling the employee's IT account
   - obtaining the employee's identity card
   - completing the leaver action
   - completing the other leaver requirements

Appeals

9. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning. The principles of the appeal section will apply.

Appendix 2: Formal Meeting Procedure

1. At each formal stage of the policy, the employee must be invited to attend a meeting.
2. Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any time.

Right to be accompanied (see Right to be accompanied)

Meeting arrangements

3. A formal meeting can take place via MS Teams or in person. If in person, the Headteacher/Senior Manager/HAP must arrange a suitable venue.
4. The employee must receive a written invitation to the meeting. This is issued by the manager who is responsible for setting up the formal meeting. A template letter is available in the Manual of People Practice. The letter will normally be sent by email.
5. The letter must give the employee a minimum of 5 working days' notice of the meeting. The timescales for the meeting can be brought forward by mutual agreement. It may be a reasonable adjustment to provide more than 5 working days' notice. Consideration of the employee's working pattern should be taken into account and an employee should not be invited to attend a formal meeting on a non-working day, unless mutually agreed with all parties.
6. The Chair should ensure that:

    - the date is set in consultation with the employee's representative and Education People Services, where applicable
    - a suitable venue is sourced
    - consideration is given to access to refreshments (water) however all parties should be advised to bring their own refreshments
    - adequate break out rooms are reserved for relevant parties
    - reasonable adjustments are considered if applicable
    - appropriate arrangements are made to enable a formal written record of the meeting to be made.

Management Record of the Meeting

7. A formal record must be taken during the meeting. It is the school's responsibility to make the appropriate arrangements for a note taker, if required. Audio or video recording of any meetings held under this policy is not normally permitted. Where the meeting is held via MS Teams, Teams must not be used to record the meeting.
8. If an employee would like to take their own notes but is unable to do so due to a physical, sensory or mental impairment, it is expected that the employee's representative will take

notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. The meeting notes must record:

- date of meeting
- who was present
- a summary of the points put forward by the employee and the manager
- Headteacher/Senior Manager/HAP decisions

9. Keeping a written record during the meeting allows the Headteacher/Senior Manager/HAP to review what was discussed when the meeting is adjourned to make their decision. It also helps with producing the outcome letter. It is useful to review the template outcome letter before the meeting so the Headteacher/Senior Manager/HAP knows the minimum level of what must be recorded. The template letter is available in the Manual of People Practice.

10. The Headteacher/Senior Manager/HAP must provide copies of the notes if the employee requests them.

11. The notes and documents shared within the formal meeting are confidential to those present in that meeting.

12. In some cases, it may be necessary to circulate documents to other School employees in connection with the matter. Any information communicated to other School employees in connection with the matter must be treated as confidential.

13. For governor hearings in maintained schools, there remains a legal requirement to have a written record of the meeting of the Governor Panel.

Alternative Date

14. When the Headteacher/Senior Manager/HAP organises the formal meeting, the Headteacher/Senior Manager/HAP should schedule an alternative date for within 5 working days of the first. The School expects that the employee and their representative will make all reasonable efforts to attend the first scheduled date. Where this is not possible, the alternative date will be used.

15. If the employee is unable to attend or does not attend the re-arranged meeting, the Chair must decide whether to proceed in their absence.

16. Further advice should be sought from Education People Services.

Sharing of Information

17. The Headteacher/Senior Manager/HAP and the employee are required to exchange all relevant papers and supporting evidence in advance of the meeting including any management report.

18. Management documents will be supplied with the invitation letter. This will include any appeal information from the previous formal stage if relevant.

19. It is the responsibility of the employee to forward the management documents onto their professional association/ trade union representative or work colleague.
20. At least 2 working days before the meeting the employee or their representative should send to the Chair any additional documents the employee may want to refer to during the meeting.
21. In exceptional circumstances, additional information may need to be submitted to the Chair/ panel outside of the above timescales. If this happens, the information should be shared with all parties as soon as possible.
22. If additional documents are submitted on the day of the meeting, the Chair of the meeting must determine if they may be included, and if so, time must be given to allow all parties to read the documentation.
23. Governors will be notified in the event that the formal Capability Policy is applied to an employee but will not be provided with the name of the employee or any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary. If any party does not maintain confidentiality, action may be taken under the Disciplinary Policy.
24. Education People Services will advise the Headteacher/Senior Manager/HAP on the collation and distribution of papers.

Communication

25. All documents will normally be sent electronically. In exceptional circumstances, information may be sent in paper form. Exceptional circumstances could relate to a reasonable adjustment or where the employee does not have access to appropriate technology to receive an email.

Relationships and impartiality

26. If the Headteacher/Senior Manager/HAP are asked to be involved in a panel the Headteacher/Senior Manager/HAP should act impartially and make decisions based only on the information presented in the meeting. If the Headteacher/Senior Manager/HAP have concerns and cannot act impartially, for example due to previous knowledge that makes the Headteacher/Senior Manager/HAP unable to make objective judgements or decisions, it may not be appropriate for the Headteacher/Senior Manager/HAPto sit on that panel. The Headteacher/Senior Manager/HAP must not allow personal feelings, preferences, relationships or external pressures to influence their actions or decisions as a member of a panel. If the Headteacher/Senior Manager/HAP cannot act impartially, the Headteacher/Senior Manager/HAP must contact the panel Chair at the earliest opportunity as alternative arrangements for the meeting should be made as soon as possible to prevent any delay. Delays can cause additional anxiety.

Who attends a Formal Stage One Meeting

For teachers and support staff

- Chair – Line manager or another manager
- HR Adviser from Education People Services (adviser to the Chair)
- Employee
- [Optional] Employee's work colleague or professional association/ trade union representative
- [Optional] witnesses (which may include the line manager)
- [Optional] a note taker
- [Optional] an observer for training purposes with the consent of all parties

For a Headteacher

- Chair/Panel – Headteacher Appraisal Panel (HAP)
- HR Adviser from Education People Services (adviser to the Chair/Panel)
- Employee
- [Optional] Employee's work colleague or professional association/ trade union representative
- An advocate from the School Improvement provider and an HR Adviser from Education People Services (to present the management case)
- [Optional] witnesses (The chair of the HAP will usually be called as a witness)
- [Optional] a note taker
- [Optional] an observer for training purposes with the consent of all parties

27. If required, an additional professional adviser from the School Improvement provider will be present at any stage to provide the governors with professional advice.

28. The Chair/panel should not have had previous involvement in the case.

29. The Chair/panel must declare any conflict of interest or involvement in the matters prior to the meeting/ hearing so that an alternative Chair/ panel can be found.

30. The HR Adviser to the Chair does not perform a decision-making role. Their function is to provide advice on legal issues, correct application of the policy and procedural matters.

Who attends a Formal Stage Two Meeting

For teachers and support staff

- Chair – Headteacher (where they have delegated powers of dismissal) OR a Governors' Panel
- HR Adviser from Education People Services (adviser to the Chair/Panel)
- Employee
- [Optional] Employee's work colleague or professional association/ trade union representative

- An advocate from the School Improvement provider and an HR Adviser from Education People Services (to present the management case)
- [Optional] witnesses (which may include the line manager or Chair of the previous meeting)
- [Optional] a note taker
- [Optional] an observer for training purposes with the consent of all parties

For a Headteacher

- Chair/Panel – Governors' Panel
- HR Adviser from Education People Services (adviser to the Chair/Panel)
- Employee
- [Optional] Employee's work colleague or professional association/ trade union representative
- [Optional] witnesses (The Chair of the HAP will usually be called as a witness)
- [Optional] a note taker
- [Optional] an observer for training purposes with the consent of all parties

Other meeting conditions

31. The HR Adviser to the Chair does not perform a decision-making role. Their function is to provide advice on legal issues, correct application of the policy and procedural matters.

32. If required, an additional professional adviser from the School Improvement provider will be present, at any stage to provide the governors with professional advice.

Witnesses

33. Witnesses are not normally required to be involved or attend a meeting in performance cases.

34. Witnesses should only be called if they can provide significant relevant information.

35. Both sides can request witnesses to attend the meeting. It is the responsibility of either party to arrange their own witnesses.

36. The Chair of the meeting must be notified in advance of the meeting of any witnesses who will be called.

37. Witnesses must be given due notice to attend the meeting by the person who wishes to call them.

38. If a witness is unable or refuses to attend the meeting, then the Chair can use the witness's statement if it is contained within the management report.

39. A witness may find it difficult or distressing to attend a meeting. The Headteacher/Senior Manager/HAP can provide information about support that is available to the witness during the process.

Attending a Formal Meeting

40. Every effort should be made to make it possible for the employee to attend if the employee wishes to do so. If the employee is not well enough to attend the meeting, it may be deferred until the employee is able to attend. However, a meeting will not be deferred indefinitely because the employee is unable to attend.

41. If the employee is unable to attend, their professional association/ trade union representative or work colleague may attend the meeting and represent the employee. Alternatively, the employee may wish to submit a written statement.

42. If the employee does not attend, the Chair will need to decide whether to defer the meeting or to continue in the employee's absence based on the relevant papers exchanged (see Sharing of Information]

How to Manage a Formal Meeting

43. During the formal meeting, the Chair must:

- outline the purpose of the meeting, introduce attendees, and confirm housekeeping arrangements (for example toilets, fire alarm)
- keep a written record during the meeting to refer to when reaching a decision and to help with producing the outcome letter.
- explain the possible outcomes of the meeting – these will have been set out in the letter inviting the employee to the meeting
- agree or disagree to any new evidence presented on the day of the meeting by either party
- ensure that the employee is given an explanation about why their performance is causing a concern and discuss the measures put in place during any previous stage(s) of the policy, referring to any documents or examples - or ask the manager to do so
- provide the employee with an opportunity to respond, referring to any documents or examples, or the representative can do this on their behalf
- call any witnesses who can be questioned by all parties
- invite all parties to ask questions at the appropriate point
- invite both parties to summarise their case. The manager will summarise first followed by the employee (new evidence must not be introduced at this point)
- adjourn the meeting, if necessary, to consider the evidence and decide on the outcome
- fully consider all evidence presented and decide on an outcome - the possible outcomes are detailed in 'Formal Stages'
- reconvene the meeting in the case of an adjournment
- verbally notify the employee of the outcome and the reason(s) for the decision, or say why it has not been possible to confirm the outcome and indicate when the decision will be made

44. The Chair of the meeting must also explain to the employee that:

- a letter will be sent to the employee confirming the outcome
- a copy of the letter will be placed on their personnel file.
- the employee has the right of appeal; unless the meeting is under Appendix 1 as the employee has less than 2 years' service and the employee only has the right of appeal against a dismissal decision.

Confirming the Outcome of a Formal meeting/hearing

45. The Chair will normally advise the employee verbally of the outcome at the meeting, unless agreed otherwise with the employee.

46. The Chair of the meeting must send a letter to the employee to confirm the outcome. The letter is sent within 5 working days of the meeting. A template letter is available to ensure all the necessary information is included.

47. A copy of the outcome letter must be placed on the employee's personnel file.

Improvement in performance

48. If performance improves as required, the Headteacher/Senior Manager/HAP must meet the employee to tell them this. This will be confirmed in writing and the letter will be placed on the employee's personnel file. The capability process will cease at this point and normal Performance Management will re-start.
49. If the Headteacher/Senior Manager/HAP has previously set an Improvement Period which resulted in improved performance, but performance then declines, it may be reasonable to progress straight to a Formal Stage One meeting without setting a further Improvement period under the Management discussion stage. These circumstances include:
    - where the employee has been set an Improvement Period in the last 24 months
    - where the employee has received a Formal Warning, that has expired within the last 24 months.

Manager actions following dismissal

50. If a dismissal takes place, the Headteacher/Senior Manager/HAP is responsible for:

- cancelling the employee's IT account
- obtaining the employee's identity card
- completing the other leaver requirements – for schools that use the IBC for payroll, please see the Leavers Checklist process.

Appendix 3: Appeals

1. The employee must submit their appeal in writing within **10 working days** of being informed of the outcome of the formal meeting. This must include the full reasons for the appeal.
2. The employee must send their appeal letter as follows:
    - Stage 1: Chair of the original meeting
    - Stage 2: Clerk to Governors
3. The Chair of the appeal must write to the employee to invite them to an appeal meeting.
4. The appeal is not a repeat of the original meeting/ hearing. It seeks to address the specific issues raised by the employee in their appeal letter.
5. The grounds for appeal are (this is not an exhaustive list):
    - outcome was unreasonable
    - emergence of new evidence which could have a material effect on the outcome
    - terms of a warning are unreasonable (duration or conditions imposed with the warning)
    - unfair/incorrect application/breach of the policy which could have had a material effect on the outcome.
6. A complete re-hearing is only permitted in exceptional circumstances where the Chair determines that the submitted grounds of appeal identify:
    - there was a defect in the procedure
    - new evidence has come to light since the meeting/hearing which may have an impact on the decision
    - there is a dispute about evidence given by one or more witnesses at the original meeting - in these cases, where this could have had a material effect on the outcome, it may be necessary to rehear the witness's evidence at the appeal or it may be considered necessary to hold a full meeting again.
7. Following an appeal of a Stage 2 hearing, there is no further right of internal appeal.
8. The principles of right to be accompanied will apply
9. The principles of Formal Meeting Procedure will apply
10. The principles of management record of the meeting will apply
11. The principles of an alternative date will apply
12. The principles of sharing information will apply
13. The principles of communication will apply
14. The principles of relationships and impartiality will apply
15. The principles of Witnesses above will apply
16. The Chair must hold an appeal meeting with the employee

Who attends an Appeal Meeting

For Teachers and Support Staff

Appeal against Formal Warning:

- Chair/Panel Members - Headteacher/ Governors' Panel
- Employee
- [Optional] Employee's work colleague or professional association/ trade union representative
- [Optional] HR Adviser from Education People Services
- [Recommended] note taker
- [Optional] witnesses (which may include the line manager or Chair of the previous meeting)
- [Optional] an observer for training purposes with the consent of all parties.

Appeal against dismissal:

- Chair/Panel Members - Governors' Panel
- HR Adviser from Education People Services (to advise the panel)
- Employee
- [Optional] Employee's work colleague or professional association/ trade union representative
- [Optional] other relevant parties
- [Recommended] note taker.
- [Optional] witnesses (which may include the line manager or Chair of the previous meeting)
- [Optional] an observer for training purposes with the consent of all parties.

17. If a formal warning has been issued by a senior manager the appeal may be heard by the headteacher. If the Headteacher issued a formal warning, the appeal will be heard by a Governors' Panel.

For a Headteacher

Appeal against Formal Warning:

- Chair/Panel Members - Governors' Panel
- Employee
- [Optional] Employee's work colleague or professional association /trade union representative
- [Optional] HR Adviser from Education People Services
- [Recommended] note taker
- [Optional] witnesses (which may include the line manager or Chair of the previous meeting)

- [Optional] an observer for training purposes with the consent of all parties.

Appeal against dismissal:

- Chair/Panel Members - Governors' Panel
- Employee
- HR Adviser from Education People Services (to advise the panel)
- [Optional] Employee's work colleague or professional association /trade union representative
- [Optional] other relevant parties
- [Recommended] note taker.
- [Optional] witnesses (which may include the line manager or Chair of the previous meeting)
- [Optional] an observer for training purposes with the consent of all parties.

How to manage an appeal meeting

18. During an appeal meeting, the Chair must follow Formal Meeting Procedure, however, the order changes:

- the employee or their representative presents their appeal first, including any documents and evidence.
- the appropriate manager then responds, explaining the reasons for previous decisions and presenting any supporting documents or witnesses (such as the Chair of the previous meeting).

Outcome of the appeal meeting

19. The Chair of the appeal meeting must fully consider all evidence presented and decide on an outcome. The possible outcomes are:

- the appeal is not upheld, and the previous decision remains. The Chair must explain the reasons for their decision
- the appeal is upheld. This is likely to occur when:
    - new evidence has been presented and considered sufficient to change the decision
    - a review of the process has uncovered flaws in how the Capability Policy was applied
    - there are flaws in how the formal stage meeting was conducted
    - mitigating circumstances have been uncovered which were not previously taken into account
- to impose a different sanction to the original decision*

- to reinstate the employee.

20. *The appeal outcome cannot impose a higher sanction than issued at the previous stage, although a lower sanction can be applied.
21. Where an employee has been dismissed and is reinstated following an appeal, the employee's service remains continuous and any loss of pay between dismissal and reinstatement will be paid. The school is responsible for contacting their payroll provider to make the arrangements to ensure the employee receives their pay. The school must also make the necessary arrangements for the employee to have their IT account reinstated.
22. There is no further internal right of appeal.
23. The principles of confirming the outcome will apply.

Appendix 4: Examples of unsatisfactory performance

The following list provides some examples of when it may be appropriate for the Headteacher/Senior Manager/HAP to start managing an employee under the Capability Policy. This list is not exhaustive.

The employee has been unable to demonstrate:

- that they have applied training effectively to the workplace or to their role
- that they have learned from previous mistakes, errors or breaches. This includes for example, repeated failure to spot 'phishing' emails or repetition of errors, such as data breaches
- using workplace systems (electronic and paper) effectively
- compliance with School policies and/ or procedures
- using equipment in the correct way
- producing an acceptable standard of work
- that they can perform in their role due to insufficient attendance at work (due to sickness or other absence)
- understanding job duties, priorities or goals
- understanding the aims and objectives of the School in which the employee works
- following reasonable instructions
- managing tasks effectively or flagging issues to their line manager
- meeting reasonable targets or deadlines
- having professional working relationships with colleagues
- appropriately representing the School in the execution of their role
- contributing to team and School objectives
- adapting to alternative ways of working
- understanding and responding to customer needs and required service outcomes
- behaving professionally
- addressing or escalating risks or issues appropriately

Appendix 5: Gross incompetence

1. **Gross incompetence** - occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role to such an extent that this causes or has caused serious harm or puts others (pupils, colleagues, general public or service users) or the school's reputation and performance at serious risk.
2. Gross incompetence only applies in exceptional circumstances.
3. The Headteacher/Senior Manager/HAP must seek advice from Education People Services in such cases.

Examples

4. The following list provides some examples of when a performance concern may need to be managed under the gross incompetence section of the Capability Policy. This list is not exhaustive.
5. The employee has:

- been using equipment in a dangerous or unsafe manner
- a complete lack of knowledge and professional expertise
- a complete lack of understanding of the health and safety aspects relevant to the role
- a complete lack of understanding of the professional standards required within the role
- a complete lack of knowledge of school policies and/ or procedures
- been unable to perform in the majority of their role, therefore making the improvement required too great
- failed to obtain a qualification or registration that is an essential criterion of their role
- misadvised in a professional capacity which may have a direct implication on the school's reputation.

Appendix 6: Key definitions (shown in alphabetical order)

1. **Continuous Service (for the purposes of establishing length of service and employment rights):**

- For Hampshire County Council maintained schools (Community, Voluntary Aided, Foundation, or Trust) this will be the continuous period when an employee first commenced either with another Hampshire County Council maintained school or with Hampshire County Council.
- In an Academy school, this will be continuous service with that Academy or Academy Trust unless the employee TUPE transferred to the Academy or Academy Trust (in which case continuous service the employee has at the point of transfer is also considered as employer continuous service).

2. **Equality Act 2010** - a person has a disability for the purposes of the Equality Act 2010 if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

3. **Improvement Period** – the period of time given for the employee to improve and maintain their performance. This period is defined by the Line Manager or as an outcome of a formal meeting. When a formal warning is issued, the Improvement Period lasts for the warning's duration. This does not mean that the employee has the duration of the warning period to improve their performance. The employee will be set a target/s to improve their performance within a defined period, and then the employee will need to maintain performance at the required level for the remainder of the formal warning.

4. **Live warning** - a formal warning that has not yet reached expiry date. If the employee fails to improve and or maintain their performance within this period, the performance of the employee may be considered at the next stage of the policy.

5. **Review meetings** – these must be put in place at any stage of the policy where there is a concern about the employee's performance. Notes of these meetings should be taken and saved on the employee's personnel file by the manager.

6. **Specific Review Date** - a Specific Review Date may be set instead of setting an Improvement Period. If it is determined that more information is required to make an informed decision. The review date is to be set for when information is expected to be available so a decision can be made on appropriate next steps. A review date is expected to be no longer than 3 months after the Management Discussion/ Structured Managerial Support or formal meeting. Notes of these meetings must be taken and saved on the employee's personnel file by the manager.

7. **Step progression** – refers to annual pay progression through each step of the teacher's grade up to the salary grade maximum, as outlined in the Schools Pay Policy. If step progression is withheld, this means the employee does not progress to the next pay step within their grade in September.

8. **Suspension, alternative arrangements and adjusted duties** – are neutral and precautionary acts that may be considered at any point once it is established the performance concern may amount to gross incompetence and/ or a safeguarding concern.

9. **Timescales** - all references to ‘days’ in this policy refer to working days, regarded as Monday to Friday, excluding bank holidays or public holidays. Periods of notice that are specified indicate the number of clear days between (and exclusive of) the day the letter is issued and the day of the meeting. This is consistently applied irrespective of an employee’s working pattern.