Larkspur Primary School
Formal Capability
Policy
& Procedure

Revised September 2019 - reviewed Summer 2024 (no changes)

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Formal Capability Policy

1. Aim

1.1. Larkspur Primary School is committed to ensuring that all employees are encouraged and supported to achieve and maintain acceptable standards of performance. The School seeks to provide a working environment which encourages employees to develop and maximise their potential and in the normal course of work most employees achieve and may exceed these standards.

1.2. There are occasions where the standards of performance are adversely affected by the actions of employees and fall below acceptable levels. The School recognises that these actions are not always due to misconduct or deliberate non-compliance with instructions, but due to the employee's lack of capability to perform the duties and responsibilities of their post effectively.

1.3. The aim of this policy is to help and encourage employees to achieve and maintain standards of performance and to provide the necessary improvement through the provision of reasonable structured help, advice, supervision, support, and training.

2. Definition

2.1. Capability is the ability an employee has to perform their duties to standards that are acceptable to the School for the effective and efficient delivery of its educational services.

3. Scope

3.1. This policy applies to all employees appointed by the Governing Body of the School who have successfully completed a probationary or induction period. For those employees who are still within their probationary or induction period support will be provided via the probationary or induction processes.

3.2. In this School, the Governing Body acts as an agent of Gateshead Council in undertaking the functions of the employer.

3.3. The Capability Policy will:

- maintain and improve the quality of education provided for students in this School by supporting employees to achieve and maintain accepted standards of performance;
- effectively support employees whose performance does not meet acceptable standards;
- establish reasons for unsatisfactory performance and provide reasonable structured help, advice, supervision, support, and training;
- demonstrate to employees that the Governing Body is acting in the best interests of the School;
- be implemented in a fair, consistent, and responsible way;

- be made available to all employees.

3.4. This policy applies when an employee's standard of performance falls below acceptable levels except in the following cases:

- where unsatisfactory performance is due to a single action or omission that has such a serious adverse effect that may amount to gross misconduct, in this situation the School's Disciplinary Policy and Procedure will be followed;
- where wilful misconduct, insubordination or in exceptional cases, where performance jeopardises the health and safety of employees or students, in this situation the School's Disciplinary Policy and Procedure will be followed; or
- where unsatisfactory levels of sickness absence are affecting performance, in this situation the School's Sickness Absence Management Policy and Procedure will be followed.

4. Responsibilities

4.1. The Governing Body will:

- conduct the School with a view to promoting high standards of educational achievement;
- delegate authority to the relevant Committee to administer this policy and procedure on its behalf;
- abide by all relevant legislation and will not discriminate on the grounds of any protected characteristic as defined by the Equality Act 2010 with regard to all decisions on performance;
- delegate to the Head Teacher/Line Manager/Appraiser the management of any employee's performance;
- have overall responsibility for the implementation of this policy and will ensure the policy and procedure is applied consistently and fairly.

4.2. The relevant Committee will:

- only allow those Governors who are not employed to work in the school to take part in formal capability meetings with employees when required;
- exercise its responsibilities within the constraints of the policy and procedure;
- treat information about any employee's capability record as confidential and only divulge information when operationally necessary;
- take account of any advice from Human Resources with regards to applying the procedure and employment law;
- ensure all formal capability meetings are minuted;
- report decisions taken at formal capability meetings to the next meeting of the full Governing Body.

4.3. The Head Teacher/Line Manager/Appraiser will:

- regularly and consistently communicate and demonstrate the expected standards of performance and behaviour;
- ensure the standards are realistic, measurable and relevant to the job;
- identify reasons for any concern(s) and support the employee to establish a means of resolving them at the early intervention stage;
- monitor and assess progress towards targets in the employee's action plan;
- provide, in a timely manner, reasonable structured help, advice, supervision, support, and/or training to help the employee achieve and maintain the required standards;
- ensure that where an employee fails to improve their performance there is sufficient evidence including documentation.

4.4. The employee will:

- work to achieve and maintain an acceptable standard of performance;
- seek and utilise opportunities that will develop and improve their skills base;
- attend meetings in line with the timescales within this procedure;
- arrange for their chosen trade union representative or work colleague to attend any appropriate meetings if they wish to be accompanied;
- raise any concerns in relation to the capability process as part of their response at any capability meeting or within two working days of any capability meeting.

5. Review

5.1. This Capability Policy and Procedure was agreed by the Governing Body of Larkspur Primary School on ……

5.2. It is a non-contractual policy and does not form part of an employee's contract of employment.

5.3. The School may amend it at any time subject to consultation with all employees and recognised trade unions.

Formal Capability Procedure

1. Introduction

1.1. Performance problems will be identified during the appraisal period and will, wherever possible, be resolved with the early intervention of support from the appraiser via the School's Appraisal Policy thereby avoiding the need for commencing this procedure.

1.2. The formal capability procedure below will only be followed where the School's Appraisal Policy has determined that early intervention has not had a positive impact on the employee's standard of performance.

1.3. Those employees who are required to be registered by a national body to undertake their professional role will be made aware that should their performance not improve via this procedure they will be reported to their relevant national body.

1.4. When the School receives a reference request for any employee subject to this formal capability procedure, factual information regarding the employee's capabilities will be shared with the prospective employer.

2. Formal Capability Meeting

2.1. The employee will be notified by their appraiser in writing, within 10 working days of the early intervention review meeting, that they have been referred to a formal capability meeting with the relevant Committee. The notification will inform the employee of:

- the date and time of the meeting;
- the location;
- the capability concerns;
- the right to be accompanied at the meeting by a trade union representative or work colleague;
- all relevant evidence from the review meeting that is to be relied upon;
- the potential to cease to require the employee to work at the school (only to be included when concerns have not been improved upon/concerns are of such a serious nature and this is a possible outcome);
- the requirement to forward to the Chair of the Committee conducting the meeting, any documents upon which they intend to rely on two working days prior to the date of the meeting.

2.2. The letter will be given to the employee and a copy enclosed for the employee's trade union representative or work colleague.

2.3. Unless the School and the employee agree otherwise, at least 5 working days' notice of the formal capability meeting will be given. It is the employee's responsibility to arrange the attendance of their chosen trade union representative or work colleague. If this date is not suitable for the employee or the trade union representative or work colleague, they must offer an alternative date which is within 5 working days of the original date.

2.4. The formal capability meeting can take place in the absence of the employee and a decision will be made on the evidence available. Where an employee is unable to attend, they may nominate their trade union representative or work colleague to present their response to the concerns and any supporting documentation on their behalf. Alternatively, the employee may submit their response in writing to the chair of this meeting.

2.5. The formal capability meeting will be held by the Committee who will be advised by Human Resources and the same adviser as attended the early intervention review meeting. It will be the chair's responsibility to explain the purpose of the meeting, identify those in attendance and how the meeting will be conducted.

2.6. At the formal capability meeting the appraiser will set out the continuing concerns in relation to the employee's performance using the documentary evidence provided. The employee and their representative, the Committee and/or the advisers will be able to ask questions of the appraiser.

2.7. The employee will then be given the opportunity to respond to the concerns raised. The employee and their representative can be questioned by the appraiser, the Committee and/or the advisers present.

2.8. Once all the information has been presented and examined, both parties will be given the opportunity to summarise their main points to ensure nothing has been missed. The employee will finally be asked if they have anything further to say.

2.9. The employee and their representative, and the appraiser will leave the meeting but usually will remain in school to await the decision which should be communicated to them orally. If it is not practicable for them to remain in school during the deliberations, then they may be asked to return to hear the decision at a later time or by telephone if requested.

2.10. The Committee, advised by Human Resources, will then decide in private whether capability action is justified and if so, what level of action will be applied. The level of action will be determined considering any mitigating factors presented.

2.11. Full and careful notes will be taken during the formal capability meeting and the Committee will identify a separate person to take the necessary notes to allow all parties to concentrate fully on the discussions.

2.12. If, at the conclusion of the formal capability meeting, it is decided that no formal capability action is to be taken, the employee will have this confirmed to them in writing and the employee will be returned to the normal appraisal process via the school's appraisal policy and procedure

3. Capability Action

3.1. If the Committee determines that capability action is justified the employee will be advised of this, and the outcome and reasons will be confirmed in writing. The employee will also be advised of the right of appeal.

3.2. The following are the various levels of capability action. Their use will vary depending upon the employee's level of performance and the improvement shown. The school will normally progress through capability improvement note, final capability improvement note to ceasing to require the employee to work at the school with notice where there has been a failure to improve after the issuing of previous improvement notes.

3.3. The level of capability action does not have to be followed in strict order and there may be circumstances where an improvement note may need to be repeated and/or extended or result in the requirement to cease working at the school after an improvement note.

Capability Improvement Note

3.4. When the Committee is not satisfied that the employee's performance has sufficiently improved the employee will receive a capability improvement note. A record of the note will be kept on the employee's personal file until the formal capability procedure concludes and used as the basis for monitoring and reviewing the employee's performance over the specified period.

Final Capability Improvement Note

3.5. If the employee currently has a capability improvement note regarding their performance, then a final capability improvement note may be given. This may also be the decision where an employee's performance is deemed to be of such a serious nature that immediate improvement is required. A record of the final capability improvement note will be kept on the employee's personal file until the formal capability procedure concludes and used as the basis for monitoring and reviewing the employee's performance over the specified period.

Improvement Note Timescales

3.6. The employee will be given a reasonable timescale to achieve the required improvement, therefore an improvement note, or final improvement note when implemented will be for a minimum of 6 weeks up to a maximum of 6 months depending on the circumstances of the employee and the level of improvement required. When setting the timescale, the Committee will consider:

- the nature of the role;
- the support provided;
- the early intervention plan.

3.7. There may be exceptional circumstances where a longer period than 6 months is set due to, for example, the frequency of the work undertaken to meet a particular target.

Alternative employment short of ceasing to require the employee to work at the school

3.8. Where it is determined that due to the employee's performance they cannot remain in their post and this would normally warrant ceasing to require them to work at the school, but for some mitigating factors, the Committee may consider alternative employment.

3.9. The alternative employment is dependent on a suitable alternative post being available immediately within the school that addresses the matters that currently prevents the employee attaining satisfactory performance. In addition, the employee must agree to the transfer and have the necessary skills for the post (or be able to attain the skills with reasonable training).

3.10. Suitable alternative employment may include a post at a lower grade than the employee's current post. Protection arrangements do not apply where alternative employment is provided as an alternative to ceasing to require the employee to work at the school.

3.11. If alternative employment is found, a final capability improvement note will also be issued. If alternative employment is not possible then the employee will be required to cease working at the school.

Cease to be Required to Work at the School with Notice or with Pay in Lieu of Notice

3.12. Where an employee currently has a final capability improvement note and there has been insufficient progress towards targets or achieving the action plan they may be required to cease working at the school with notice or immediately with pay in lieu of their notice period depending on the circumstances on the grounds of capability.

3.13. A record of the requirement for the employee to cease working at the school will be kept on the employee's personal file and the Council will be notified by the Committee of this decision. The Council will issue a notice of dismissal and will inform the employee of their notice period.

3.14. The date of dismissal for a non-teaching employee will be the day after the employee has been formally notified in writing by the Council. For any non-teaching employee their notice period and any outstanding holiday entitlement (if applicable) will be paid as a lump sum payment subject to tax and national insurance deductions.

3.15. The date of dismissal for a teacher will be the next relevant date within the academic year in line with their terms and conditions. A teacher will receive

full pay with normal deductions for the period of their notice but will not be required to attend the School.

4. Confirming Capability Action

4.1. Following a decision to take any capability action, not including ceasing to be required to work at the school, the employee will be informed in writing by the Committee of:

- the details of the concerns stating the grounds for, and the level of action taken;
- the improvement that is required;
- the duration of the capability action and its review date;
- the date of the meeting with the appraiser to devise the capability action plan;
- that they may be liable to further capability action if their performance does not improve;
- that the review meeting can be brought forward if insufficient progress has been made;
- that the review meeting can be delayed if support is not provided as agreed;
- where alternative employment is offered, the nature of this employment;
- the right of appeal.

4.2. Following a decision to cease to require the employee to work at the school, they will be informed in writing by the Committee of:

- the details of the concerns stating the grounds for, and the level of action taken;
- the effective date;
- the right of appeal.

4.3. The letter will be given to the employee or sent by recorded delivery and a copy enclosed for the employee's trade union representative or work colleague.

5. Action Plan

5.1. Following an employee being issued with a note, the appraiser will meet with the employee on the date agreed at the capability action meeting to devise the capability action plan (see appendix 2 for an example). The employee has the right to be accompanied at this meeting by a trade union representative or work colleague.

5.2. The capability action plan will detail:

- the targets to be achieved;
- the success criteria that will be used to evaluate achievement;

- the assistance that will be provided to support improvement being achieved;
- the mechanisms for monitoring performance during the specified period.

5.3. The appraiser and employee will seek to agree the capability action plan but, if that is not possible, the final decision on the setting of this will rest with the appraiser. If the capability action plan is not agreed the employee may record any comments in writing as an appendix to the plan.

6. Monitoring Improvement Notes

6.1. Following an employee being issued with a note and a capability action plan, the appraiser will ensure that any support identified is given to the employee during the specified period.

6.2. The appraiser will undertake to monitor the employee during the specified period to assess whether the employee is achieving the targets for improved performance (see appendix three for an example).

6.3. The appraiser will maintain accurate records of the support given and the progress achieved. These records will be shared with the employee throughout the specified period.

6.4. If an employee is making insufficient progress towards the acceptable standards of performance during the specified period, the note's review meeting (see below) may be brought forward.

6.5. If the support is not provided as agreed the note's review meeting (see below) can be delayed thus extending the note to allow time for the agreed support to be provided.

Improvement Note Review Meeting

6.6. At the end of the specified period, the Committee will hold the improvement note review meeting with the employee. The employee will have the right to be accompanied at the meeting by their trade union representative or work colleague. The Committee will have the same advisers present as attended the formal capability meeting.

6.7. At the improvement note review meeting, the appraiser will set out the employee's achievements towards completing the capability action plan, the monitoring that has taken place during the specified period and the overall outcome using the documentary evidence provided. The employee and their representative, the Committee and/or the advisers will be able to ask questions of the appraiser.

6.8. The employee and their representative will then be given the opportunity to respond. The employee and their representative can be questioned by the appraiser, the Committee and/or the advisers present.

6.9. At the end of the meeting the Committee will decide, in private with their advisers, whether the employee has:

- met the acceptable standards of performance;
- made good progress towards the acceptable standards of performance; or
- made insufficient progress towards or not met the acceptable standards of performance.

6.10. The employee and their representative, and the appraiser after leaving the meeting will usually remain in school to await the decision which should be communicated to them orally. If it is not practicable for them to remain in school, then the employee may be asked to return to hear the decision at a later time or by telephone if requested.

6.11. Where the employee meets the acceptable standards of performance the employee will be informed, in writing, that there is no further action, that the formal capability procedure has concluded and that their performance will be assessed in line with all other employees via the school's appraisal policy and procedure. All records will be removed from the employee's file due to the formal capability procedure ceasing.

6.12. Where the employee has made good progress but there is still a shortfall between acceptable and actual performance their improvement note will be extended and a further specified period set and confirmed in writing. Section 6 will be repeated.

6.13. Where the employee makes insufficient progress towards improvement, the Committee will determine what level of capability action will be taken; the actions from section 4 onwards will be repeated if appropriate

7. Right of Appeal

7.1. An employee has the right of appeal to the Appeals Committee of the Governing Body against any level of capability action and the appeals process as detailed in the school's appeals procedure must be followed.

7.2. Whilst the appeal is ongoing the capability action plan, if appropriate, will be suspended pending the outcome of the appeal.

Appendix 2 - Example Capability Action Plan

Name of Employee	
Name of Appraiser	
Appraisal/Early Intervention	
Date(s) of appraisal/appraisal review meetings	
Date(s) of observations	
Date(s) concerns raised	
Date early intervention plan implemented	
Date(s) support/training/development delivered	
Date(s) early intervention plan monitored/reviewed	
Outcome of early intervention plan	
Date outcome of early intervention plan confirmed in writing	
Capability Procedure	
Date of formal capability meeting	
Outcome of formal capability meeting	
Date capability action plan implemented	
Date(s) capability action plan monitored/reviewed	
Date(s) of improvement note review meeting	

Target *What is the target? Reference teachers' standards*	**Action** *Include all actions needed to achieve target*	**Timescale**	**Support Identified** *What? Who will complete? When will support happen?*	**Success Criteria** *What does successful achievement look like?*	**Monitoring/Evaluation/Review** *By whom? When? How will it be evaluated? Include dates*	**Outcome** *Has the target been met or not? If partially met what? Include comments*