Ysgol Gynradd Maes-y-Deri
Oaklands Primary School

Together Everyone Achieves More

Capability Policy

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STATEMENT OF POLICY

Oaklands Primary recognises that the competence and commitment of its employees is fundamental to the achievement of its goals and aspirations. The rate of change within school life continues to increase and with it the importance of employees learning and developing new skills. The school readily accepts its responsibility to support and facilitate staff development.

The great majority of employees are successful in their necessary development, and are adept at putting their knowledge and skills to good use in contributing to the school's success. However, in some circumstances, individuals will experience difficulties in demonstrating the levels of competence required to perform their role effectively. It is essential that such situations are dealt with in a supportive and effective manner.

This procedure for managing capability specifies the steps the SMT must take to ensure that an employee who is not meeting the required standard in their work is given every reasonable opportunity to improve. The procedure specifies how the appropriate support to develop and to demonstrate success in their job should be identified and provided. It also aims to ensure that individuals are treated fairly, and describes the appropriate course of action in circumstances where an unacceptable deficit of required competence remains irresolvable.

INTRODUCTION

Oaklands Primary aims to ensure the best possible quality education and care is provided for all its pupils. To achieve this, a prime goal of the school is:

"To create a flexible organisation that enables maximum performance and contribution from trained, skilled staff "

The school's Performance Management Policy sets out a systematic approach to achieve this by developing teacher's expertise through continual professional development, and to ensure that this is linked to supporting the targets set in the SDP

However, there may be occasions when an individual finds difficulties in meeting the required standard in her/his post. In such situations the school would want the matter dealt with in a supportive, consistent and effective manner. To that end, this procedure for managing capability has been developed.

This document informs the SMT how to consider, approach and handle cases where there is continual under performance. It specifically relates to performance issues resulting from a lack of skill, ability or knowledge. It also ensures that such arrangements are continually monitored, reviewed and evaluated. Principles established in employment law require the employer to: -

a. Ensure that the employee is aware of the required standard of performance

b. Seek to establish the reasons for under performance and offer assistance to the employee to improve performance

c. Warn the employee of the consequences of continued under performance

d. Allow the employee sufficient time to improve before any decision is taken on their future employment.

The purpose of this document is to bring together, in one place, guidance on how to approach, consider and handle cases where performance can be improved. By using it as a starting point, once a performance issue has been identified, both the Senior Management Team (SMT) and member of staff will have the benefit of a clear, systematic and sympathetic process, designed to improve and maintain performance at an acceptable level.

This document is primarily a means of providing assistance to SMT in dealing with performance issues. It is intended as an aid to good management practice and member of staff relations, providing an opportunity to:

- help the SMT deal with any questions about a member of staff's capability, both competently and sensitively, having regard to the variety of possible underlying circumstances

and

- help a member of staff, within a clear and consistently applied framework,

reach and maintain the required standards of performance.

It is the responsibility of the headteacher (Senior Manager) in partnership with the Governing Body to monitor and review the Capability Procedure and its application.

REDUCING THE RISK OF A CAPABILITY PROBLEM ARISING

To minimise the risk of a capability problem occurring, the SMT in partnership with the Governing body should ensure that:

- Job descriptions accurately convey the main purpose and requirement of the position; are up to date and relevant to the requirements of the job
- Specifications are clearly related to job descriptions and these should form the basis for recruitment, selection and performance management processes
- Recruitment and selection is thorough; to ensure that only those with the necessary skills and abilities to take up the position are appointed
- Staff are carefully monitored in the first few months of any appointment, to pick up on any specific training or development need, and to check that performance is developing as expected
- Training and development opportunities appropriate to the requirements of the job and the needs of the member of staff are provided.
- Procedures for the performance management of teaching and non-teaching staff are laid down in the Performance Management Policy. Discussion takes place regularly with each member of staff individually, so that they are aware of how they are progressing
- The consequences of any failure to meet the required standard are fully explained to the member of staff.
- Following promotion or extra responsibility staff are made aware of the requirements of the new post and given any necessary further training and development.
- The needs of a disabled employee are met prior to setting performance targets, that appropriate advice is sought, and any adjustments which may overcome potential difficulties are considered. (Disability Discrimination Act 1995).
- Attention is given to ensuring that instructions, standards and targets are understood by members of staff for whom English may not be their first language.

INDICATORS OF POOR PERFORMANCE

SMT need to be aware that any one or more of the following may, but will not always necessarily, indicate a problem of poor performance:

- failure to meet a specific standard or level of performance
- failure to meet pre-set targets or deadlines
- observation of instances of poor performance
- complaint(s) or criticism(s) of the staff members work by others

WHEN TO USE THE PROCEDURE

The procedure should be used to manage any issue of poor performance resulting from a lack of skill, ability or knowledge. They would not be used in situations where a member of staff has been guilty of misconduct. In these cases, the School's Disciplinary Procedure would be used.

GENERAL PRINCIPLES

It is the responsibility of SMT in partnership with the Governing Body to ensure that standards of work performance are achieved by all staff for who they are responsible.

IMPROVEMENT ACTION

Action taken under these guidelines should be designed to improve or correct work performance. Genuine incapability is not misconduct and the member of staff should be treated sympathetically and supportively.

DISCIPLINARY ACTION

Where, when dealing with a case as a capability issue SMT believes that misconduct has occurred, the matter should be dealt with in accordance with the School's Disciplinary Procedure.

CAUTIONS

When a caution is given in accordance with this procedure, it is to ensure the member of staff is aware that their performance is below the standard required, to tell them in what way(s) it has fallen short, and what is expected of them as a result. It states the consequences if the required standard is not reached by the end of a designated review period.

REVIEW PERIODS

(See Cautions above.) These must be reasonable in length, depending on the nature of the position. A review period of several weeks, or longer, may be necessary.

REPRESENTATION

A member of staff has the right to be represented by a trade union representative, or work colleague, at all formal stages. At the informal stages, the member of staff may be accompanied, but not formally represented.

TRADE UNION REPRESENTATIVES

No formal action will be taken against the Trade Union member under this procedure until a full-time official of the trade union has been informed.

INITIAL ACTION

Where there is poor or unsatisfactory performance, or an instance of inappropriate action, the SMT should point it out to the member of staff as soon as possible and remind him/her, in a constructive and positive manner, of the standard required.

INFORMAL ACTION

Where the SMT believes that there is a persistent or more serious problem of poor performance, a meeting should be held with the member of staff.

This meeting should be between the SMT and the member of staff only, although the SMT should make the member of staff aware that a trade union representative, or work colleague, can accompany them to the meeting. For these purposes, “accompanied” means that they attend as an observer, not as a formal representative. The objectives of the meeting are to:

- inform the member of staff of where and how work performance is below standard
- give the member of staff an opportunity to explain and explore the issue jointly
- identify, with the help of the member of staff, possible reasons
- to work out with the member of staff a plan to improve performance to the required standard
- identify, where appropriate, support mechanisms to aid improvement

Possible causes of poor performance may be:

- workloads/resources
- domestic/personal reason(s)
- ill-health/medical condition (sometimes hidden)
- misconduct

. ACTION PLAN

At the end of the meeting, the SMT should agree with the member of staff an action plan designed to resolve the particular situation. This will set the review period, specify the additional training or supervision, changes in working arrangements or practices, provision of equipment or facilities, referral to other agency or any other measures being taken, as well as include any revised targets and the review date.

NOTES

The SMT should make a note of the meeting. Copies of this and the action plan should go to the member of staff immediately following the meeting.

MONITORING AND REVIEW

If, after monitoring during the review period, performance improves to the required standard, no further action will be necessary. The SMT must inform the member of staff of the satisfactory outcome of the review, and place a note to this effect on the member of staff's personal file.

Where performance does not improve, (or where there is some improvement, but the required standard is still not reached), the SMT may consider a further review period or consider more formal action.

FORMAL ACTION

Where the SMT believes that a more serious case of lack of capability exists, or where persistent poor performance has not responded to informal action, she/he should arrange a formal meeting with the member of staff.

A letter outlining the date and time of the meeting must be sent to the member of staff at least 5 working days in advance of the meeting.

The letter must include:

- the reason for the meeting
- the name of the SMT who will conduct the meeting
- the member of staff 's right to be represented by a trade union representative, or work colleague, who may speak on their behalf
- copies of any documentation to be used at the meeting
- a copy of the Capability Procedure

At the meeting - the SM should:

- Set out the standard of work performance expected of the member of staff in the areas under consideration.
- Explain how the member of staff's performance has fallen short of what is required and the impact of this.
- Confirm that any informal measures have failed to improve performance to the level required and say why.
- Provide the member of staff with an opportunity to explain and/or give reasons why the SM should not consider that performance has been poor.

- Discuss the way forward and ensure suitable targets and action plans are drawn up as previously described i.e*. "At the end of the meeting the SM should set out an action plan designed to resolve the particular situation. This 'will set the review period, specify the additional training or supervision, changes in working arrangements or practices, provision of equipment or facilities, referral to other agency or any other measures being taken as well as include any revised targets and the review date".*
- Set a review date which allows for regularly updating the member of staff on progress being made and gives a reasonable period of time during which the required improvement must be made.
- If not satisfied with the explanations offered for their poor performance, caution the member of staff that if they fail to reach the required standard

during the course of the review period, further formal action may be taken.

After the meeting, the SM must confirm the action to be taken following the meeting, in writing, to the member of staff within 5 working days. The letter should state:

- the area where improvement is required
- the level of improvement required and/or the required standard that must be achieved
- the measures that will be made available to ensure that the member of staff can reach this level, for example training or supervision
- any other action that will be taken by the SM or member of staff to help resolve the situation
- the consequences if performance does not reach a satisfactory level.

The SM should ensure that any further training or assistance offered is made available and the member of staff's progress is closely monitored. Performance should be assessed as objectively as possible and as often as is considered appropriate. The member of staff should be kept informed of his/her progress. If performance fails to reach an acceptable level, the SM should inform the member of staff and give them an opportunity to explain.

If performance is assessed as satisfactory at the end of the review period, the SM should inform the member of staff of the outcome of the review and confirm this in writing.

If, however, performance has not reached the required level at the end of the review period, or earlier, if there is clearly no improvement or even deterioration in performance during the review period, the SM should hold a further formal meeting.

At the meeting, the SM should follow the same procedure as was used during the first formal meeting.

If the SM considers that there is reasonable further action that could be taken to improve the member of staff's performance, then a suitable plan should be drawn up and implemented. The member of staff should be left in no doubt at this stage that failure to reach a satisfactory level could result in further action being taken, including the termination of their contract of employment.

The SM should also consider if there are other means of resolving the situation, that is, alternative employment. This action should only be taken if the member of staff accepts that he or she may have a capability problem and says that he or she is willing to be considered for alternative employment.

INABILITY/REFUSAL TO ACCEPT LACK OF CAPABILITY

In some cases, the member of staff may not accept that a performance problem exists. Where this is the case, the SM should still:

- caution the member of staff of the consequence of a failure to reach required standards of performance
- determine the period within which improvement is expected; and

- set out the assistance and on-the-job training which the member of staff will be given

If the member of staff refuses to accept and respond to offers of help, and performance does not improve to the level required, it may be necessary to consider the future employment of the member of staff before the end of the review period.

REFERRAL TO THE GOVERNING BODY

In instances where the required improvement has not been forth coming, and the continued employment of the member of staff is under question, a formal hearing should be instigated. The Governing Body must be provided with the following details:

- the area where the member of staff has failed to meet the required standard
- the consequences of the member of staff's poor performance
- the action taken to assist the member of staff to date

The Governing Body will arrange a hearing and the member of staff will be informed in writing, with not less than 5 working days' notice, of:

- the date and time of the hearing
- the purpose of the hearing
- the right to be represented
- that a possible outcome of the hearing, if the member of staff is held to be incapable of performing their duties, is dismissal from the school's

Both SM and member of staff should attend the hearing and may produce documentary evidence and call witnesses.

All documentation must be exchanged at least 2 working days prior to the hearing.

The procedure to be followed at the Capability Hearing is attached at Appendix 1.

In the case of poor performance by a member of the SMT, referral shall be to the Governing Body

CAPABILITY APPEAL HEARING

Where the outcome of the hearing results in a decision to dismiss, the member of staff must be advised that they have the right of appeal against this decision and, should they wish to exercise this right, they should write to the Director of Human Resource within 5 working days of the receipt of the letter confirming the decision. They should also be advised of any right of appeal they may have to an Employment Tribunal.

The procedure to be followed at the hearing is attached at Appendix 2.

EVALUATION OF THE ARRANGEMENTS TO ADDRESS CAPABILITY ISSUES

Where capability issues have been identified and addressed, it is essential that information be fed back to the Human Resource Division. This information can then

be used to assess the effectiveness of the arrangements, and to identify areas where achievement of the required level of performance has been hindered by factors other than staff capability. The person who dealt with the final stage of the process should complete the form. Stage 2 – SMT/SM, stage 3 – SM. See appendix 3.

The completed form should be forwarded to; The Human Resources Division

Date reviewed: June 2013 Date of next review: Autumn 2018

Signed: (Chair of Governors) Helen F. Wagner.

Signed: (Headteacher) C Wright

APPENDIX 1

THE CAPABILITY HEARING PROCEDURE

INTRODUCTION

The member of the SMT conducting the hearing should introduce all parties and explain the purpose of the hearing. The names of any witnesses being asked to attend should be recorded and all documentary evidence being presented should be verified.

THE SM PRESENTATION

1. The SM will present his or her case, beginning with an opening statement outlining the reasons for bringing the case. Questions may be asked, of the manager, on the opening statement, in the following order:

    - member of staff and/or their representative
    - Hearing Officer – Vise-Chair of Governing Body
    - the SM may then call his or her witnesses and ask questions of them. The witness(es) can then be questioned by the other parties in the order outlined above

THE MEMBER OF STAFF'S PRESENTATION

- the member of staff or representative will present the response to theSM presentation.

Questions may be asked of the member of staff in the following order:

- the presenting SM
- the Hearing Officer
- the member of staff or representative will then call their witness(es) and ask questions of them. The witness(es) will then be questioned by the other parties in the order outlined above.

2. Once each party has completed their questioning, the witness(es) should not be recalled. The hearing officer, however, retains the right to recall any witness(es) should further clarification of any issue be required. Where this happens, all parties should be recalled to the hearing.

SUMMING UP STAGE

1. Each party will then have the opportunity to sum up, with management going first. No new arguments or evidence may be introduced at this stage.

2. The Hearing Officer will then ask both parties to withdraw and will come to a decision based on the evidence presented.

3. Once a decision has been made, both parties should be recalled and informed of the outcome. The decision should be confirmed in writing within 5 working days.

4. The letter should give the reason for the decision and inform the member of staff of any appeal rights they may have, including the time limits within which they have to register their appeal. A copy of the outcome letter should be placed on the member of staff's personal file.

5. Where the outcome of the hearing results in a decision to dismiss being effected, the member of staff must be advised that they have the right of appeal and, should they wish to exercise this right they should write to the Chair of Governing Body within 5 working days of the receipt of the letter confirming the decision. They should also be advised of any right of appeal they may have to an Employment Tribunal.

APPENDIX 2

CAPABILITY APPEAL HEARING PROCEDURE

The member of the SMt conducting the appeal hearing should introduce all parties and explain the purpose of the hearing. The names of any witnesses being asked to attend should be recorded and all documentary evidence being presented should be verified.

THE MEMBER OF STAFF'S PRESENTATION –

1. The member of staff (or representative) will present his or her grounds of appeal and outline the reason(s) why he or she believes that the decision was unfair. The grounds for appeal will be one or more of the following:

    - the process used to come to the decision
    - the action proposed
    - the findings of the capability hearing

2. Questions may be asked of the member of staff in the following order:

    - presenting SMT
    - Chair of Governing Body conducting the appeal hearing

3. The member of staff may then call his/her witness(es) and ask questions of them. The witness(es) can then be questioned by the other parties in the order outlined above.

THE MANAGER'S PRESENTATION

1. The SM will present the response to the member of staff (s) presentation.

2. Questions may be asked of the SM in the following order:

    - member of staff /representative
    - Chair of Governing Body conducting the appeal hearing

3. The SM may then call witness(es) and ask questions of them. The witness(es) will then be questioned by the other parties in the order outlined above.

4. Once each party has completed their questioning, the witness(es) should not be recalled. The hearing officer however retains the right to recall any witness should further clarification of any issue be required. Where this happens, all parties should be recalled to the hearing.

SUMMING UP STAGE

1. Each party will then have the opportunity to sum up, with member of staff /representative going first. No new arguments or evidence may be introduced at this stage.

2. The Chair of Governing Body conducting the appeal will then ask both parties to withdraw and will come to a decision based on the evidence presented.

3. Once a decision has been made, both parties should be recalled and informed of the outcome. The decision should be confirmed in writing within 5 working days.

4. A copy of the outcome letter should be placed on the member of staff's personal file.

APPENDIX 3

CAPABILITY PROCEDURE EVALUATION FORM

School:
Job title and grade of post held by member of staff:
Briefly describe the areas identified where the level of performance is not acceptable:
Briefly describe the measures taken to support the member of staff to achieve and maintain the required standards:
At what stage of the procedure were the capability issues resolved? e.g informal discussion stage
What parts of the procedure were most helpful?
What parts of the procedure were least helpful?
Was the achievement of the required level of performance hindered by factors other than the member of staff's capability? e.g. unavailability of suitable learning opportunities. Yes / No If yes please provide details:
Any additional comments you would like to make:
Signed: Date:
Name (please print): Title of post held: