

CAPABILITY PROCEDURE

1. PURPOSE

1.1 Governing bodies of maintained schools control the conduct and discipline of staff and must have capability rules and procedures for staff in line with Standards and Framework Act 1998 and Education (Staffing of maintained schools) (Wales) Regulations 2006.

1.2 This procedure is intended to give clear guidance to all involved when issues arise concerning the capability (that is performance of duties expected in role) of members of the school staff and is designed to uphold and safeguard the high education standards in schools. It is not intended to deal with issues of ill health or conduct as these will be dealt with under the appropriate Schools policy.

1.3 In line with employment law requirements, the procedure aims to:

- Ensure that the employee is aware of the required standard of performance and reference points for support if required
- Seek to establish reasons for under performance and provide assistance, support and training
- Warn the employee of the consequences of continued under/unsatisfactory performance
- Allow the employee time to improve before any decisions are taken on future employment

1.4 The Vale of Glamorgan Council, following consultation with Trade Unions has developed the procedure. The Vale of Glamorgan Council therefore recommends it for adoption by Governing Bodies.

2. SCOPE

2.1 The procedure applies to all staff that are directly employed by the Governing Body of the school and will cover Teaching and Support staff, including Head teachers and Deputies.

3. POLICY STATEMENT

3.1 The Vale of Glamorgan Council and Governing Body are committed to providing high standards of education to pupils. They are also committed to providing assistance to employees in order for them to achieve the standards of performance expected of them. However, it is recognised that there are occasions when despite best efforts, standards of performance are inadequate and in this event the School must have a fair procedure that can ensure the continuing delivery of high standard of education to pupils.

3.2 At all stages of the process it is paramount that confidentiality is maintained.

4. PROCEDURE

4.1 Before Formal Procedures

4.1.1 It is expected that the performance of all staff is managed on a day to day basis and that most matters are best resolved informally by the Head teacher or senior member of the leadership team with reference to the Schools performance management policy and development/improvement plan. Consideration must be given to the fact that personal issues may cause temporary, short-term performance issues and in these cases appropriate support/allowances should be given.

4.1.2. The responsibility for performance issues of the Head Teacher throughout this process rests with the Governing Body who may seek the advice of Local Authority advisors as necessary.

4.1.3 Where a member of staff may be under-performing, the Head Teacher or senior member of the leadership team should make arrangements to investigate and collect evidence – this must be someone other than the Head Teacher. The Chair of Governors must make arrangements for this to be done if the performance of the Head teacher is in question and should seek assistance from a Local Authority Advisor.

4.1.4 The employee must be advised that performance is under review. Once the information is gathered and the extent of the problem established there are three initial options:

- No further action necessary if performance is at satisfactory standard
- Arrange additional support without using the formal procedure; or
- Arrange a formal interview (formal approach for more serious cases or where informal approach has not brought about desired improvements).

4.2 Additional Support/coaching

4.2.1 Support, informal coaching/training should aim to encourage and help the employee to improve and should always be done in confidence. The employee should have the opportunity to offer explanations and input to

suggestions for improvement and ways to achieve this. The employee must be made aware of performance requirements, ways to address shortcomings, how performance will be reviewed and over what period of time the process will take. They must be aware that failure to achieve required standards within timescales agreed will mean that the formal procedure will be implemented.

4.2.2 Discussions must not harass the employee or turn into a formal interview. If more serious concerns arise or if the employee expresses discontent or indifference to the informal support the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

4.2.3 The type of support that could be considered in order to reach agreed standards of performance could include one or more of the following:

- Coaching
- Advice from staff at the school, other schools or LA
- Observing other members of staff (e.g. other teachers/LSA either own school or other school)
- Observation and feedback on employee's performance
- Appropriate training
- Target setting and timescales

The above is not an exhaustive list and it is important that the employee helps to identify areas of support that they feel would help them reach satisfactory performance. It is useful to keep a note on agreed methods of support.

4.2.4 Although representation is not applicable at this stage, an employee is entitled to seek advice from their Trade Union representative but this must not prevent informal meetings taking place when requested by the Head Teacher /senior member of the leadership team. If the employee is not happy with the informal approach, they may seek to move the procedure to the formal stages.

4.2.5 After a period of review involving observation, assessment and feedback a firm conclusion should be reached. The options will be either to;

- no further action necessary if performance is now at satisfactory standard; or
- convene a formal interview.

4.2.6 If formal procedures are being invoked against a trade union representative, it is necessary to inform the senior full time official before hand.

5. FORMAL STAGE

5.1 Stage 1

5.1.1 If it is necessary to move to the formal stage, the Head teacher must write to the individual giving a minimum of 5 working days notice to attend a meeting. The letter should provide details of the areas of concern and supporting evidence should be provided. The individual is entitled to be accompanied at this stage from either Trade Union representative or work colleague.

5.1.2 At the meeting the employee will be expected to respond to issues of concern about performance. They may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

5.1.3 A decision should be made after all the facts and any representations from the employee have been considered. The Head Teacher or senior member of the leadership team should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.

5.1.4 The options are:

- Drop the matter if not a case of poor performance
- Issue first written warning and implement first assessment period
- Final written warning – in very serious cases. Can only be given by Head Teacher for staff or member of the Governing Body in the case of capability issues of the Head Teacher.

5.1.5 The decision on which stage to commence will depend on the seriousness of the problem. If performance is unsatisfactory implementation of the formal assessment period will normally be the next step. In cases of particularly serious concern, where the education of children is in jeopardy or the performance is likely to have serious impact on the running of the school, it is possible to move directly to Stage 3 of the procedure. This will invoke an assessment period not exceeding 4 working weeks.

5.1.6 Where a formal warning is issued, the Head or senior member of the leadership team should use the remainder of the meeting to;

- specify the areas of performance that need improvement
- give clear guidance on the improved standard of performance required and agree targets
- agree the support that will be available, and how performance will be monitored over the following weeks
- depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next meeting
- make it clearly understood that failure to improve may lead to dismissal.

5.1.7 An employee has the right to appeal against a warning. Any appeal against a warning must be made within 5 working days, and heard within 10 working days of receipt of written notification of appeal. It must not interrupt

the progress of the assessment procedure, unless the appeal decision leads to the matter being reconsidered.

5.1.8 A letter should be sent to the employee immediately after the formal interview confirming:

- the level of warning issued
- the areas of concern
- standards expected
- the support agreed
- the assessment process that will follow including timescales and dates of formal review meetings (NB representative to be advised of dates)
- the consequences of not meeting required standards
- the right of appeal

A first written warning will remain on file for a total of 26 working weeks.

5.2 First assessment stage

5.2.1 Weeks 1 to 13 - Regular observation, monitoring and evaluation of performance, with appropriate guidance, training and support as agreed. Regular feedback on progress during this period is required.

5.2.2 If at any point during this stage the circumstances suggest a more serious problem a decision may be taken to move directly to the alternative assessment stage outlined in point 6.

5.2.3 Week 13 – Formal meeting to assess performance over the previous weeks.

5.2.4 If the level of performance has been satisfactory the capability procedure can cease at this point, with a letter from the Head or senior member of the leadership team to confirm this. The warning will remain on file for a further 13 working weeks from date of this formal review.

5.2.5 If performance subsequently falls below standard within this time it will be necessary to convene a formal meeting (with right to be accompanied) and issue a second written warning with a further 7 week assessment period. The letter to the employee should make this clear.

5.3 Stage 2

5.3.1 If improvement has not been achieved, it will be necessary to move to Stage 2 of the procedure and a letter sent (as outlined in 5.1.8) confirming a second written warning.

5.3.2 An employee has the right to appeal against a warning. Any appeal against a warning must be made within 5 working days, and heard within 10 working days of receipt of written notification of appeal. It must not interrupt the progress of the assessment procedure, unless the appeal decision leads to the matter being reconsidered.

5.3.3 Following the issue of a second written warning, there will be a second assessment period over a further 7 working weeks.

5.4 Second Assessment stage

5.4.1 Weeks 14 to 20 - Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee. Regular feedback on progress during this period is required.

5.4.2 If at any point during this stage the circumstances suggest a more serious problem a decision may be taken to move directly to the alternative assessment stage outlined in point 6.

5.4.3 Week 20 - Formal evaluation meeting to assess performance over the previous weeks.

5.4.4 If the level of performance has been satisfactory the capability procedure can cease at this stage with a letter from the Head teacher or senior member of the leadership team to confirm this. The second warning will remain on file for a further 19 working weeks from date of this formal review.

5.4.5 If performance subsequently falls below standard within this time it will be necessary to convene a formal meeting (with right to be accompanied) and issue a final written warning with a further 4 week assessment period. The letter to the employee should make this clear.

5.5 Stage 3/Final Warning

5.5.1 If performance has continued to be unsatisfactory a final written warning should be issued. The employee must be told clearly that failure to achieve an acceptable standard may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the employee (as outlined at 5.1.8 of the procedure).

5.5.2 Any appeal against a final warning must be made within 5 working days and heard within 10 working days of written notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

5.5.3 Following the issue of a final written warning, there will be a final assessment period of a further 4 working weeks.

5.6 Final assessment stage

5.6.1 Weeks 21 to 24 - Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee. Regular feedback is required.

5.6.2 Weeks 24 - Final formal evaluation meeting to report the assessment of performance over the previous weeks.

5.6.3 If performance has been satisfactory the capability procedure can cease at this point with a letter from the Head teacher. The final warning will remain on file for a further 35 working weeks from date of this formal review.

5.6.4 If performance subsequently falls below standards in this time, the Head teacher may either;

- a) implement a further 4 week assessment period or
- b) refer the matter to the Staff Disciplinary/Dismissal Committee.

This decision will be based on the length of time that has elapsed during the warning period and the extent of the performance issues. The letter to the employee should make this clear.

5.6.5 If performance is unsatisfactory the employee should be told that the matter will be referred to the governing body's Staff Disciplinary/Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing should be recorded in a letter to the employee.

5.6.6 The meeting with the Staff Disciplinary/Dismissal Committee should be held within 3 working weeks and exchange of documents must take place 5 working days before the meeting.

5.6.7 The Head Teacher may consider agreeing a period of paid leave of absence for the staff member at this stage whilst the process takes place.

6. ALTERNATIVE ASSESSMENT STAGES IN SERIOUS CASES

6.1 In a particularly serious case, for example where an employee's classroom control is so poor that order cannot be established or where there are serious implications on the ability of the school to maintain the effective learning environment for pupils, the assessment period can be shortened to a period of four working weeks.

6.2 The Head teacher must arrange a formal interview giving at least 5 working days notice and allowing right to be accompanied from either a colleague or Trade Union representative.

6.3 At the meeting the employee must be advised of the areas of concern and given opportunity to put forward any explanations for performance issues. In the event of unsatisfactory explanation, the Head teacher should issue a final written warning and advise that the next step will be a 4 week assessment procedure. The employee should be advised that failure to improve may lead to dismissal. A letter should be sent to the individual outlining this (as in 5.1.8).

6.4 Weeks 1 to 4- Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

6.5 Week 4 - Final evaluation meeting to report the assessment of performance over the previous weeks.

6.6 If performance has been satisfactory the capability procedure can cease at this point with a letter from the Head teacher. The final warning will remain on file for 35 working weeks.

6.6 If performance subsequently falls below standards in this time, the Head teacher may either;

- a) implement a further 4 week assessment period or
- b) refer the matter to the Staff Disciplinary/Dismissal Committee.

This decision will be based on the length of time that has elapsed during the warning period and the extent of the performance issues. The letter to the employee should make this clear.

6.7 If performance is unsatisfactory the employee should be told that the matter will be referred to the governing body Staff Disciplinary/Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing should be recorded in a letter to the employee.

6.8 The meeting with the Staff Disciplinary/Dismissal Committee should be held within 3 working weeks and exchange of documents must take place 5 working days before the meeting.

6.9 The Head Teacher may consider agreeing a period of paid leave of absence for the staff member at this stage whilst the process takes place.

7. STAFF DISCIPLINARY/DISMISSAL COMMITTEE

7.1 The employee will be given at least 10 working days written notice to attend the meeting and will be entitled to be accompanied by either Trade Union or work colleague. Exchange of documents from both sides must take place at least 5 days before the meeting.

7.2 At the meeting, the Committee will consider the evidence of performance issues provided by the Head teacher and the employee will be allowed to make their representations. The committee must then decide whether it is necessary to dismiss the employee or issue a lesser warning. If dismissal is the outcome, the employee will be informed of the decision and given right of appeal. The Committee may wish to consider payment in lieu of notice at this stage in view of potential impact on pupils.

7.3 As an alternative to dismissal, in the appropriate circumstance the Committee may consider a lesser sanction, for example removal of TLR responsibilities and payment (with no safeguarding) or redeployment to another post within the school, another school or a post within the Local Authority. However, this option will be subject to 1) the existence of a suitable post 2) the acceptance of another school to accept redeployment 3) the

availability of a suitable post within the Local Authority. It is therefore not possible to guarantee this as an alternative to termination of employment.

7.4 The employee can appeal against this decision in writing within 5 working days of receipt of written decision. The Appeal must be heard within 10 working days of receipt of letter of appeal. The appeal will be heard by the Staff Appeal committee who must decide whether or not to uphold the decision of the Staff Disciplinary/Dismissal Committee. The employee is entitled to be accompanied at the Appeal.

7.5 If the Appeal Committee upholds the decision of the Staff Disciplinary/Dismissal Committee, they must confirm this in writing and also ask the Director of Life Long Learning to confirm the decision on behalf of the Local Authority.

7.6 If the employee does not appeal, the Committee will ask the Director of Life Long Learning to confirm the dismissal.

8. NOTIFICATION IN ACCORDANCE WITH THE EDUCATION (SUPPLY OF INFORMATION (WALES) REGULATIONS 2003

8.1 The Regulations require employers to report cases of serious professional incompetence on the part of teachers to the GTCW and to report cases of misconduct on the part of teachers and other school staff to the National Assembly for Wales.

8.2 If a teacher is dismissed as part of this procedure, the case will be reported in accordance with these regulations.

8.3 If the Capability procedure is not concluded during the formal stage because the employee resigns, the Staff Disciplinary/Dismissal Committee must still reach a view on whether dismissal would have been the outcome on the basis of evidence available. For community, community special or voluntary controlled schools, they must notify the Vale of Glamorgan Council Human Resource Department who will advise the GTCW. In the case of staff of voluntary aided, foundation or foundation special schools, the notification to GTCW must be made by the Governing Body.

9. SUPPLEMENTARY INFORMATION

9.1 Capability of Head Teacher/Deputy Head

9.1.1 In the event that issues involve the capability of Head teacher or Deputy, the procedure will remain the same but it will be conducted by a member of the Governing Body who must seek the involvement of a Local Authority school advisor.

9.2 Appeals in the Formal Procedure

9.2.1 Appeals should be heard by either Head teacher (if not involved in the formal stage) or a panel of Governors. The panel should consist of no less

than 3 members. Use of governors at this stage need to account for the role they need to take in forming the Staff Dismissal and Appeal Committees.

9.2.2 An employee is entitled to be accompanied at an appeal hearing by a colleague or union representative.

9.2.3 Appeals should consider the reasonableness of the decision made any relevant evidence, or any procedural irregularities. New evidence will be admitted at this stage provided all parties have seen the evidence. The appeal will need to take account of all information before reaching decision as to whether or not to uphold the warning.

9.2.4 Where an appeal is upheld the warning should be removed. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

9.2.5 The appeal decision should be confirmed in writing and the employee told that there is no further appeal against the decision.

9.3 Role of Governors

9.3.1 The use of Governors to hear appeals against warnings should be limited to ensure a sufficient number of impartial Governors remains available for the dismissal and dismissal appeal committees. Normally at least three Governors are required for the dismissal committee and no fewer for the appeal.

9.4 Role of Local Authority Advisers

9.4.1 Advisers with education experience can be requested to advise the school and where appropriate assist with the process, including classroom observation and providing support. They should also be requested to support the Governing Body in cases involving the Head teacher/Deputy. The school will cover any associated costs in the event of external support being necessary.

9.5 Representation at formal interviews, appeals and dismissal hearing

9.5.1 An employee has a legal entitlement to be accompanied by a colleague or union representative. If the employee's chosen companion is not available at the time proposed for a formal meeting, and the employee proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the meeting, the school must rearrange the event to the time proposed by the employee. The availability of Governor's may mean this time scale can be varied by agreement.

9.6 Monitoring arrangements

9.6.1 Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

9.7 Written records and retention of warning on personnel file

9.7.1 A written record should be made of all formal interviews with the employee and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded after a specified period of satisfactory performance. These periods are a total of 26 working weeks for first and second written warning and 39 working weeks for a final written warning.

9.8 Staff who are absent through illness during the procedure

9.8.1 Absence which is triggered by the capability procedure, and which management believes is likely to be long term, should be referred immediately to the occupational health adviser to assess whether the employee is fit for continued employment. Schools must take a considerate and sympathetic approach, but in general the length of time necessary to wait for an employee's health to improve before considering whether to terminate should be subject to occupational health guidance.

9.8.2 Short term absences should not unreasonably delay any part of the formal stage of the capability procedure but assessment periods may be extended by up to one week maximum to accommodate this. Reasonable steps should be made to enable the employee to attend formal meetings, but in event of short term illness the meeting may be postponed once and heard within 5 days of the original date. In the event that the employee is still unable to attend, the meetings may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. Their representative may attend on their behalf in these circumstances. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

9.9 Disputes about the procedure

9.9.1 Any disagreements or grievances about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

9.10 Grievances

9.10.1 In exceptional circumstances an employee may raise a grievance about the behaviour of a Head teacher or senior member of the leadership team during the course of a capability procedure. Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated and

consideration should be given to bringing in another Head teacher or senior member of the leadership team to deal with the capability case. Any records should be passed to the new Head teacher or senior member of the leadership team and if appropriate the case should be continued within the same timetable.

10 Working Days/Weeks

10.1 Throughout this procedure working days or weeks refers to normal school term time weeks/days when the school is open (i.e. Monday to Friday, not school holiday periods).

11. MONITORING AND REVIEW

This policy and procedures will be reviewed every two years or in light of any developments in employment legislation or good employment practice.

Consultation with Teacher Associations and Single Status TU	Concluded on 14 April 2008
Agreed/Accepted by Governing Body of School (name) _____	Date:

OVERVIEW OF PROCEDURE



