

# THE SHROPSHIRE GATEWAY EDUCATIONAL TRUST

## Support staff Capability Policy

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## Introduction

This policy's aim is to help staff to improve their performance in order to achieve the professional standards expected of them and to also ensure fairness and consistency in the treatment of members of staff who are subject to action considered as necessary to address unsatisfactory performance.

This policy clarifies that through the appraisal process staff should be supported to address any identified concerns over their performance and any capability procedure should only be implemented where there are serious concerns that the appraisal process has been unable to address.

Whilst the aim of this procedure is to bring about improvement in performance, by necessity the procedure has to recognise that a continued failure by a member of staff to improve their performance may lead to a decision to terminate their employment at the school. It therefore provides the framework for the governing body to exercise its responsibility under the School Staffing (England) Regulations 2009 for the dismissal of any member of staff on the grounds of capability. In adopting this model procedure the governing body will resolve to delegate the power to dismiss an employee to a Staff Dismissal Committee comprising at least three members to be appointed by the governing body. A separate Committee will have the responsibility of hearing appeals. No governor who is employed to work at the school should be appointed to these committees.

## Capability Procedure for Support Staff

### 1. Purpose

- 1.1 This procedure has been adopted for use in managing serious concerns over the performance of staff employed by the school that the school's adopted Appraisal Policy has been unable to address.
- 1.2 The procedure does not deal with misconduct, which may be defined as an act or omission which is considered to be unacceptable professional behavior, or capability which is related to ill health.
- 1.3 The procedure has been drawn up to ensure compliance with the statutory ACAS Code of Practice on Disciplinary and Grievance Procedures, the School Staffing (England) Regulations 2009 and relevant regulations relating to school governance.

### 2. Application of the procedure

- 2.1 The procedure covers all support staff employed by the school other than those employed on a casual basis where no guarantee of further employment has been given.
- 2.2 The Governing Body is committed to ensuring that the capability procedure will be applied fairly and consistently and in a non-discriminatory way, i.e. regardless of:
  - Race
  - Gender
  - Sexual orientation
  - Disability

- Religion and belief
- Age
- Marital/partnership status
- Contract type
- Trade union membership.

### 3. Implementation of the procedure

- 3.1 The school's adopted Appraisal Policy establishes that staff will receive support in order to address identified concerns regarding their performance and that where concerns remain following the support provided, consideration will be given to a formal capability meeting being held under this procedure. The decision to hold a formal capability meeting will be for the headteacher, or other senior member of staff delegated with the task by the headteacher.
- 3.2 At least five working days' notice will be given of the formal capability meeting. The notification will contain:
- sufficient information about the performance concerns and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting;
  - copies of any written evidence;
  - the details of the time and place of the meeting;
  - confirm to the member of staff of their right to be accompanied. This may be a **professional association/trade union representative** or work colleague. The headteacher or other senior member of staff can be supported by HR if required.

### 4. Formal capability meeting

- 4.1 This meeting is intended to establish the facts. It will be conducted by the headteacher or other senior member of staff delegated with the task by the headteacher. The meeting allows the member of staff, accompanied as above if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.  
(The rest of the procedure assumes the Headteacher will conduct the capability process if another senior member of staff has been delegated this task then they will take the role of the Headteacher as referred to from this point forward)
- 4.2 This meeting will be conducted as follows:
- a) The headteacher will confirm the status and purpose of the meeting and will set out the grounds for concern by reference to the evidence derived from an assessment of performance under the school's Appraisal Policy.
  - b) The member of staff together with their representative may ask questions of the headteacher.
  - c) The member of staff or his/her representative may provide oral and/or written representations in response to the evidence under consideration.

- d) The headteacher may ask questions of the member of staff and their representative.
  - e) The headteacher will ask the parties present whether there are any final points they wish to be taken into consideration.
- 4.3 Where responsibility to support a required improvement in performance and to assess progress under the school's Appraisal Policy lay with an appraiser who is not the headteacher, then the headteacher will consider the option for the appraiser to be present at the meeting in order to provide any clarification over the evidence under consideration.
- 4.4 The headteacher conducting the meeting may conclude that it would not be helpful to continue under the capability procedure and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The headteacher conducting the meeting may also adjourn the meeting, for example if they decide that further investigation is needed or that more time is needed in which to consider any additional information.
- 4.5 Where at the conclusion of the formal capability meeting the headteacher considers that there are grounds for the performance to be managed under this formal capability procedure, they will in writing within 5 working days:
- a) issue the member of staff with a formal warning or, exceptionally in very serious cases, a final written warning; and
  - b) identify the performance concerns and/or professional shortcomings,
  - c) give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures (this guidance should be set out in an action plan, see Annex 1) (which must include the setting of new objectives focused on the specific weaknesses that need to be addressed, and any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made); and
  - d) explain the support that will be available to help improve their performance;
  - e) set out the timetable for improvement and explain how performance will be monitored and reviewed
  - f) warn the member of staff formally that failure to improve within the set period could lead to dismissal.
- 4.6 The timetable for improvement will depend on the circumstances of the individual case. It will be reasonable and proportionate providing sufficient opportunity for improvement to take place. *The timetable will be no less than 6 and no more than 10 weeks.*
- 4.7 Notes will be taken of formal capability meetings and a copy promptly sent to the member of staff.
- 4.8 Where a warning is issued, the member of staff will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

## 5. Monitoring and review period following a formal capability meeting

- 5.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period and will be reflected in the action plan (see Annex 1). At the end of the review period the member of staff will be invited to a formal review meeting unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see section 7).

## 6. Formal review meeting

- 6.1 As with formal capability meetings, at least five working days' notice of the review meeting will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by **a workplace colleague, Trade union or professional association representative**.
- 6.2 HR support may be present to provide procedural advice to the headteacher.
- 6.3 This meeting will be conducted in accordance with the procedure set out at Annex 2.
- 6.4 If the headteacher conducting the meeting is satisfied that:
- the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start; or
  - If some but not sufficient improvement has been made and headteacher is confident that more is likely, the first monitoring and review period will be extended;
  - If no, or insufficient improvement has been made during the first monitoring and review period, the member of staff will receive a final written warning.
- 6.5 Notes will be taken of the formal review meeting and a copy sent to the member of staff.
- 6.6 Any final written warning will mirror any previous warnings that have been issued.
- 6.7 Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the second monitoring and review period and the procedure and time limits for appealing against the final warning.
- 6.8 At the end of the monitoring and review period the member of staff will be invited to a decision meeting.
- 6.9 When a final written warning is issued careful consideration will be given to the timetable set for improvement which will depend on the circumstances of

the individual case. It may be considered appropriate for the timetable to be a shorter period than that set following the issue of a formal written warning.

## 7. Decision meeting

- 7.1 As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied.
- 7.2 HR support may be present to provide procedural advice to the headteacher. Also any other Adviser who has been monitoring and evaluating performance will attend the meeting.
- 7.3 The meeting will be conducted in accordance with Annex 2.
- 7.4 If an acceptable standard of performance has been achieved during the second monitoring and review period, the capability procedure will end and the appraisal process will re-start.
- 7.5 If performance remains unsatisfactory, the headteacher will suspend the member of staff and refer the matter for consideration by the Governors' Staff Dismissal Committee, with a recommendation that the member of staff be dismissed.
- 7.6 The headteacher will confirm the decision to refer and the reasons in writing.

## 8. Decision to dismiss

- 8.1 As soon as practicable a meeting of the Staff Dismissal Committee will be convened, giving all parties at least ten working days notice, in writing.
- 8.2 HR support may be present to provide procedural advice to the Committee and the meeting will be normally held within working hours.
- 8.3 The procedure to be followed will be in accordance with Annex 4. The member of staff may be accompanied by a **professional association/trade union representative** at the meeting.
- 8.4 The Committee will need to decide
- whether the member of staff's performance is unsatisfactory; and
  - whether the capability procedure has to date been applied correctly.
- 8.5 The decision of the Staff Dismissal Committee will wherever possible be communicated verbally at the end of the meeting.
- 8.6 Any decision of the Committee must be confirmed by the Chair in a letter promptly sent to the member of staff and in the case of dismissal must state the reasons for the dismissal and right of appeal.

8.7 The Chair of Governors will notify in writing its decision to dismiss and the reasons for it. The school must then write to the member of staff, giving the appropriate contractual notice in accordance with the Burgundy Book, within fourteen days of the date of the notification.

Or

The Chair of Governors will write to the member of staff, giving the appropriate contractual notice, within fourteen days of the date of the notification.

8.8 If the Staff Dismissal Committee decide not to dismiss the Chair of the Committee will write to the member of staff confirming that the Capability Procedure will end and that the Appraisal Process will restart.

## 9. Appeals

9.1 If a member of staff feels that a decision to dismiss them, or other formal action taken against them under the capability procedure, is wrong or unjust, they may appeal in writing against the decision within ten working days of the decision, setting out at the same time the grounds for appeal. The letter must be addressed to the clerk to the governors.

9.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

9.3 The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

9.4 The appeal will be dealt with by a committee of governors with delegated responsibility (normally the Governors' Staff Discipline/Dismissal Appeals Committee) made up of governors who have not been party to the decision against which the appeal has been made. The procedure to be followed at the appeal hearing will be in accordance with Annex 3 attached where it is an appeal against action short of dismissal. The procedure to be followed for an appeal against dismissal will be in accordance with Annex 4 attached. The member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

## 10. Other Considerations:

### 10.1 Role of the Governing Body during the Capability Procedure

10.1.1 Members of the governing body have key roles in the operation of the capability procedures at the stages of appeals and dismissal hearings. Governors should therefore at all times remain mindful of the need not to prejudice their position in such formal proceedings. To safeguard governors' impartiality, it is essential that any information provided by the headteacher to governors about members of staff under the capability procedure is strictly

controlled and provided on a need to know basis only. Whilst in reporting to governors it may be judged necessary to specify the name of an individual member of staff detailed information should not be given nor should discussion ensue on the matters of concern. Any such report by the headteacher should be recorded as a confidential item in the minutes.

10.1.2 On applying these procedures, the headteacher will have made professional judgements, taking advice as appropriate, as the lead professional within the school. Consideration by governors serving on the relevant committees should relate to whether the action taken by the headteacher is reasonable in that it is supported by evidence and is a decision another headteacher, acting with proper regard to his/her responsibilities, could have chosen to take. They should also consider whether these procedures have been correctly applied.

## 10.2 Written Records and Removal of Warnings

10.2.1 Written records relating to action under these procedures must be maintained and held confidentially on file. This includes records of meetings and decisions as well as documents relating to evidence presented. Such records remain 'live' whilst this procedure is in progress.

10.2.2 Where in the light of performance improving to a satisfactory level, and there being confidence that this can be maintained, a decision is taken by the headteacher to bring capability procedures to a close, records will remain 'live' on a member of staff's personal file for a further specified period as follows: -

- a) following the issue of a formal warning for a period equivalent to two school terms
- b) following the issue of a final warning for a period equivalent to up to six school terms (2 years).

10.2.3 Where at the end of the periods specified above the headteacher makes a decision that satisfactory performance has been sustained, the previous action or warning will be disregarded for the purpose of any further action which may subsequently arise under these procedures. The decision will be confirmed in writing and a copy of the letter will be held on the member of staff's personal file.

10.2.4 Where during the periods specified above further concerns about the performance result in the need for a further capability meeting then the warnings may be taken into consideration when determining any further warning and the timetable set for improvement under this procedure.

## 10.3 Staff Absent through Illness during the Procedure

10.3.1 Cases of absence which is triggered by action under these procedures and which the headteacher believes may be long term, should after no less than 4 weeks absence be referred to an Occupational Health Adviser for assessment of whether the member of staff is fit for continued employment and the appropriateness or otherwise of continuing with monitoring or formal

procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

10.3.2 HR advice should be sought prior to any decision to proceed with a meeting required under these procedures in the absence of the member of staff concerned.

10.3.3 Where a member of staff is diagnosed as having a medical condition which is covered under the Equality Act, then consideration will need to be given, including at the point of any action under this procedure, to 'reasonable adjustments' which may be necessary to enable him/her to achieve the satisfactory performance of his/her duties and responsibilities.

## 10.4 Grievances

10.4.1 In exceptional circumstances a member of staff may raise a grievance about the behaviour of the headteacher or other senior member of staff during the course of this procedure. Where this relates to the management of the procedure or the exercise of a role within the operation of the procedure, and depending on the circumstances, it may be appropriate to suspend the procedure whilst the grievance is considered. Such a delay should only however be considered where there is prima facie that the member of staff has grounds for a grievance. It should also be considered whether there is an option to continue the capability procedure through a responsibility being transferred to another senior member of staff. If appropriate the capability and grievance case may be dealt with concurrently and the capability process may continue within the same timescale.

## 10.5 Confidentiality

10.5.1 The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the capability system. Capability documentation should be regarded as a confidential document other than for the purpose of quality assurance.

## Consistency of Treatment and Fairness

The governance board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The governance board is aware of the guidance on the Equality Act issued by the Department for Education. We have carefully considered and analysed the impact of this policy on equality and the possible implications for staff with protected characteristics, as part of our commitment to meet the Public Sector Equality Duty (PSED) requirement to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.



**STRICTLY CONFIDENTIAL**

**CAPABILITY PROCEDURE - ACTION PLAN (TEMPLATE)**

EMPLOYEE

POSITION

ASSESSMENT PERIOD

<u>Standards requiring improvement and objectives set</u>
<u>Indicator(s) of required improvement and achievement of objectives</u>
<u>Arrangements for monitoring and review and person responsible</u>
<u>Means of support for the achievement of improvement/objectives</u> (The person(s) responsible for the provision of support should be indicated)

Signed: ..... (Employee)

Signed: ..... (Headteacher)

Date: .....

## PROCEDURE AT FORMAL CAPABILITY REVIEW/DECISION MEETINGS

The procedure set out below will be followed where a formal capability review/decision meeting is called. An appropriate HR support will normally attend the meeting to provide procedural advice

The person responsible for the monitoring of the performance during the review period will be present at the meeting. Witnesses will not normally be called although documentary evidence presented at the meeting will give sufficient detail of information provided by other parties which is relevant to the proceedings.

1. The headteacher will introduce the parties present and confirm the status and purpose of the meeting.
2. The headteacher will present the findings from the review period supported by the Adviser/person responsible for the monitoring of the performance.
3. The member of staff together with their representative may ask questions of the headteacher and the Adviser/person responsible for the monitoring undertaken.
4. The member of staff or their representative may provide an oral or written statement in response to the evidence presented.
5. The headteacher may ask questions of the member of staff and their representative.
6. The headteacher will ask the parties present whether there are any final points they wish to be taken into consideration.

### Notes:

- A written record of the meeting will be made and circulated to the parties.
- Any party may call for an adjournment during the meeting.
- At the conclusion of the meeting the parties present, with the exception of the Adviser providing procedural advice, will withdraw whilst the headteacher deliberates.

### Annex 3: APPEAL HEARING AGAINST FORMAL ACTION SHORT OF DISMISSAL: PROCEDURE

Where the appeal is against action by the Headteacher short of dismissal, the appeal will be heard by the Governors' Committee with formally delegated responsibility to hear such an appeal. Under this procedure the Committee has the power to confirm or vary any decision of the Headteacher or Chair of Governors, taking into account any advice from a HR Adviser at their meeting. In varying the decision, the Committee will determine what action is to be taken under the provisions of the procedure. Their decision is final.

At the appeal meeting:

1. The Chair will introduce those present, confirm the purpose of the meeting and process to be followed and confirm that either side may request an adjournment at any stage of the proceedings.
2. The member of staff or their representative will be asked to present the grounds for the appeal (calling such witnesses as may be necessary).
3. The Headteacher may ask questions of the witnesses (where called), the member of staff and, where the representative gives evidence, of the representative.
4. The member of staff or their representative may re-examine the witnesses (where called).
5. The Headteacher will present the case (calling any witnesses as may be necessary).
6. The member of staff or their representative may ask questions of the witnesses (where called) and the Headteacher.
7. The Headteacher may re-examine the witnesses (where called).
8. Members of the Committee may ask questions of the parties or witnesses at any stage but will seek to confine questioning until after questioning of witnesses by the parties is completed.
9. The Headteacher will be invited to sum up the case.
10. The member of staff or their representative will be invited to sum up the case.
11. At the conclusion of the hearing the parties and any other persons present, with the exception of the representative providing advice, shall withdraw whilst the Committee deliberates.

Notes:

- A written record of the meeting will be made and circulated to the parties.
- The Chair of the Committee may during the proceedings above recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this
- way following the apparent conclusion of the hearing (i.e. at 11. above then) both parties must be recalled.
- Either party may present documentary evidence, copies of which shall be served upon the other party at least five working days in advance of the hearing date.
- Witnesses shall only be present whilst giving evidence unless the Chair of the Committee directs otherwise.
- Any party may call for an adjournment during proceedings. Whenever possible a room will be provided for the employee and his/her representative for use outside of the hearing.

**Annex 4: GOVERNORS' STAFF DISMISSAL COMMITTEE/GOVERNORS' STAFF DISMISSAL APPEAL COMMITTEE (This procedure applies to meetings of either Committee)**

The following procedure will be used where a recommendation for a member of staff's dismissal has been made following a decision meeting held under the capability procedure. It will also be used for any appeal against a decision to dismiss a member of staff following operation of the capability procedure. In either HR support will normally attend the meeting to provide procedural advice.

1. The Chair will introduce those present, confirm the purpose of the meeting and process to be followed and confirm that either side may request an adjournment at any stage of the proceedings.
2. The Headteacher will be invited to present the case (calling such witnesses as may be necessary).
3. The member of staff, or their representative, may ask questions of the witnesses (where called) and of the Headteacher.
4. The Headteacher may re-examine the witnesses (where called).
5. The member of staff, or his/her representative, will be invited to present the case (calling such witnesses as may be necessary).
6. The Headteacher may ask questions of the witnesses (where called), the member of staff and, where the member of staff representative gives evidence, of the representative.
7. The member of staff, or their representative, may re-examine the witnesses (where called).
8. Members of the Committee may ask questions of the parties or witnesses at any stage but will seek to confine questioning until after questioning of witnesses is completed and prior to re-examination of the parties.
9. The Headteacher will be invited to sum up the case.
10. The member of staff, or their representative, will be invited to sum up the case.
11. At the conclusion of the hearing the parties and any other persons present with the exception of the representative, shall withdraw whilst the Committee deliberates.

**Notes:**

- Arrangements will be made for a record of the meeting to be taken.
- The Chair of the Committee may during the process above recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way following conclusion of the hearing (i.e. at 11. above) then both parties must be recalled.
- Either party may present documentary evidence, copies of which shall be served upon the other party at least five working days in advance of the hearing date.
- The member of staff in addition to his/her representative or friend who may present his/her case, may be accompanied by one other assistant who takes no active part in the proceedings. The Headteacher in addition to making use of a clerical assistant, may receive advice from a representative or friend who will take no active part in the proceedings.
- Witnesses shall only be present whilst giving evidence unless the Chair of the Committee directs otherwise.
- Any party may call for an adjournment during proceedings. Whenever possible a room will be provided for the employee and his/her representative for use outside of the hearing.