



# Capability Policy

Review: July 2021

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## **1 Purpose of policy and guiding principles**

Rastrick High School strives to be a centre of excellence for learning, and staff and students aim for the highest standards of attainment and behaviour.

1.2. The School will at all times support staff to achieve and maintain a high standard of performance in their work. To this end the School has in place other policies that support training, development and performance management.

1.3. The purpose of this capability policy is to provide line managers, senior leaders and Governors with a clear and consistent policy and procedures for managing staff who are underperforming, and therefore not meeting the required expectations for their role.

1.4. This procedure should be used where evidence leads to concern that an employee is consistently failing to reach professionally acceptable standards through lack of capability, aptitude, skill or ability.

1.5. Misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations should be dealt with under the school's Staff Disciplinary Policy.

1.6. Where ill-health or other health issues are identified as the main cause of a failure in performance, the matter should be dealt with under the school's Sickness Absence Management Procedure.

1.7. Each case will be considered on its merits and handled constructively, equitably, supportively and with understanding. Confidentiality will be maintained by everyone involved in the procedure, and only those who need information to fulfil their professional role will be made aware of an individual situation.

1.8. Individuals have the right to be accompanied by a colleague or trade union representative throughout the formal process.

1.9. 'Working days' refers to an individual's usual working pattern; this is either term time or all year round. Similarly, 'working week' is a calendar week based on an individual's term time or all year round working pattern.

1.10. All staff should be aware that entering the capability process may affect pay recommendations or decisions. Individuals will be made aware of this, in writing.

1.11. The Headteacher has the right to delegate responsibilities to appropriately trained staff, to act as 'line manager'. Where the Headteacher is subject to capability procedures the Chair of Governors will take on the role of line manager.

1.12. This policy applies to all staff in the school, with the exception of:

- staff who have a contract for less than 2 school terms;
- support staff within the contractual probationary period – these should be dealt with in accordance with probationary policy.
- specific guidance is in place for newly qualified teachers (NQTs) undergoing their induction period – see section 10.

## **2 Links with other policies or legislation**

2.1. This policy links to the appraisal arrangements as set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which replace the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). These came into force with effect from 1 September 2012. The school is not obliged to follow this piece of legislation but, to maintain best practice, has written this policy in conjunction with the model policies suggested by the Department of Education.

2.3. This policy also links with the school's CPD policy, the staff disciplinary policy and the school's performance management policy.

2.4. This policy links to individual job descriptions, person specifications and any national standards of professionalism, i.e. Teachers' Standards.

2.5. All relevant legislation applies, such as the Equality Act 2010, the Data Protection Act 1998 and all employment legislation.

## **3 Consultation**

3.1. Although there is no statutory requirement, the Governing Body has agreed to put in place a capability policy. This policy has been developed from the model policy produced by the Department of Education, with additions by the school, in consultation with recognised Trade Unions.

3.2. The policy was approved by the Governing Body after consultation with the recognised Trade Unions.

## **4 Support and training**

4.1. As part of their general responsibilities, line managers in the School set appropriate standards of performance, communicate these to staff and provide a reasonable degree of training and support to assist staff to meet the required standards. This procedure is documented in individual performance management, or probationary, records.

4.2. Equally, it is the responsibility of the employee to focus their efforts, skills and knowledge to undertake their role to the best of their ability. All staff are expected to access a range of support provided by the School, and this is detailed in the school's CPD policy.

4.3. Once an individual's probation or induction period is completed, the School continues to expect the highest standards of performance and professionalism.

4.4. Line managers are expected to make individuals aware of what is expected of them, in terms of levels of performance and that their performance will be regularly monitored and feedback provided.

4.5. Line managers will make comments, provide challenge and give support. This approach ensures that the School maintains constructive feedback on an individual's performance, with the aim of organising regular monitoring and support; this procedure will include reviewing student data, work scrutiny, learning walks and lesson observations.

4.6. It is recognised, however, that occasionally an individual's work performance may vary, but this procedure should only be used where evidence leads to a concern that an individual is regularly failing to reach professionally acceptable standards through their lack of ability, skills or aptitude.

4.7. When line managers are aware of an issue that may lead to a capability process they should seek support from the Senior Leadership group. Lines of communication between the line manager, Senior Leadership and (if applicable) the subject link should be clear throughout the process.

4.8. It is recognised that it can be a difficult and anxious time for any individual who is subject to, or involved with, capability procedures. The School recommends to staff that they should have proper representation from a recognised union to support them through this process. In addition, individuals may be referred for Occupational Health advice, if this is considered to be appropriate.

## **5 Appeals Procedure**

5.1. Where there are serious concerns about an individual's performance the formal capability procedure will be followed. See Annex 1 for the timeline for capability procedures.

5.2. The line manager and Senior Leader should, before entering the formal process, be satisfied that they have sufficient evidence to demonstrate the areas of underperformance. To ensure that the process is as robust as possible, independent or objective information is preferred. For example, external or internally verified data, joint lesson observations, feedback from internal and external professionals, a recurrence of serious complaints from parents, students or colleagues. This list of examples is not exhaustive.

### **5.4. Notice of formal capability meeting**

5.4.1. At least five working days' notice will be given of a formal capability meeting. This will be in writing, and will detail the concerns about an individual's performance to enable the individual to prepare to respond to or answer the case at the formal capability meeting. A copy of the capability policy will also be provided.

5.4.2. The individual will be advised of the time, date and location of the meeting, as well as who will be in attendance, and the individual's right to representation. Any written evidence will also be sent to the individual.

5.4.3. The meeting is intended to establish the facts. It will be conducted by the individual's subject Senior Leadership link, as designated by the Headteacher. In the case of the Headteacher, normally the Chair of Governors will conduct the meeting.

5.4.4. The meeting is an opportunity for the individual to respond to the concerns raised about their performance and to make any relevant representations. This may provide new information or a different context to the information, or evidence, already collected.

5.4.5. Once the facts are gathered and the seriousness of the matter established, the line manager will conclude the meeting by one of following options:

- decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for pursuing the capability issue).

Any remaining concerns will be addressed through providing support through the performance management process, or:

- the Senior Leader will adjourn the meeting. This option would be used to gather further information, or provide more time to consider the matter. In this case, the meeting will be rearranged within 5 working days, or:
- continue with the meeting. This is described below.

## 5.5. Formal capability meeting

5.5.1. If the formal capability meeting is continued (or reconvened after an adjournment):

- identify the professional shortcomings, e.g. which of the standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the individual can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, 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);
- explain any support that will be available to help the individual to improve their performance. This could include (but is not limited to) external courses, observing colleagues, visiting other schools/practitioners.
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be no more than 6 and no less than 4 working weeks;
- warn the individual formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning;
- advise the individual that entering the capability process may affect pay recommendations or decisions.

5.5.2. At this meeting the Senior Leader can issue a formal disciplinary warning. Generally this would be a verbal warning (that remains on file for 6 months) or, in more serious cases, a final written warning (that remains on file for 18 months).

5.5.3. A record of any formal meetings will be made and the individual will be informed in writing of the matters covered in the meeting, given information on the timeline, set for improvement and when the formal capability review meeting will be held.

5.5.4. Where a formal warning is issued, as well as advising in writing the information set out in 5.5.2, the individual will also be informed in writing of the length of time the formal warning will remain on their personal file and the time limits for appealing against the warning, as well as to whom the appeal should be addressed.

5.5.5. When a formal disciplinary warning is issued, the employee has a right to appeal against this decision. Any appeals must be in writing and be made within five working days of the formal meeting.

5.5.6. When a verbal warning is issued, please refer to 5.6 (capability review meeting).

5.5.7. When a final warning is issued please refer to 5.7 (decision meeting).

## **5.6. Formal capability review meeting**

5.6.1. The formal capability meeting will agree a review and monitoring period. Formal monitoring, evaluation, guidance and support will continue during this period.

5.6.2. The individual will be given 5 working days' notice of the review meeting (although this would generally be agreed at the formal capability meeting, therefore ensuring sufficient notice). Details of the time, date and location of the meeting, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.

5.6.3. The basis of the review meeting will be to review:

- improvements made in the identified professional shortcomings;
- improvements made in the standards of performance required;
- how the support, monitoring and feedback has been accessed and utilised to support improvements.

5.6.4. The meeting will gather the facts and will be a discussion in which the individual is able to present their case on how they have improved their performance in the areas identified. The Senior Leader will conclude the meeting by one of the following options:

- decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for pursuing the capability issue).

Any remaining concerns will be addressed through providing support through the performance management process, or:

- if no, or insufficient, improvement has been made during the review period the individual will receive a final written warning.

5.6.5. As in the capability meeting, the line manager will set out a timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the

circumstances of the individual case but will be no fewer than four working weeks and no more than six working weeks.

5.6.6. A record of any formal meetings will be made and the individual will be informed in writing of the matters covered in the meeting, given information on the timeline set for improvement and as to when the formal decision meeting will be held.

5.6.7. As a final disciplinary warning has been issued, the individual will also be informed in writing of the length of time the formal warning will remain on their personal file and will also be informed (in writing) that failure to achieve an acceptable standard of performance, within the set timescale, may result in dismissal. The individual will be given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning, as well to whom the appeal should be addressed.

5.6.8. Any appeals must be in writing and must be made within five working days of the formal meeting.

### **5.7. Formal decision meeting**

5.7.1. The formal capability review meeting, will agree a review and monitoring period. Formal monitoring, evaluation, guidance and support will continue during this period.

5.7.2. The individual will be given 10 working days' notice of the decision meeting (although this would generally be agreed at the previous meeting, therefore ensuring sufficient details of the time, date and location of the meeting, as well as who will be in attendance and the individual's right to representation). Any written evidence will also be sent to the individual.

5.7.3. The basis of the decision meeting will be to review:

- improvements made in the identified professional shortcomings;
- improvements made in the standards of performance required;
- how the support, monitoring and feedback has been accessed and utilised to support improvements.

5.7.4. The meeting will gather the facts and will be a discussion in which the individual is able to present their case on how they have improved their performance in the areas identified. The Senior Leader will conclude the meeting by one of following options:

- decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for pursuing the capability issue).

Any remaining concerns will be addressed through providing support through the performance management process, or:

- if no, or insufficient, improvement has been made during the review period the individual will be advised that the case will be referred to a capability hearing, before a panel of Governors or the Headteacher, with the recommendation to dismiss the individual.

5.7.5. At this stage, given that performance is unsatisfactory, consideration should then be given to suspending the individual pending the outcome of the capability hearing.

## **6 Capability hearing**

6.1. A capability hearing is a formal hearing to decide if an individual's employment is to be terminated on the grounds of 'capability'.

6.2. At the decision meeting the individual will be informed as to who will chair the capability hearing. Directors have delegated responsibility to the Headteacher to chair a capability hearing.

6.3. Where appropriate, the decision may be made to refer the matter to a Directors' panel. In this case, the hearing will be before a panel of two or three Directors.

6.4. At least five working days' notice will be given of a formal capability hearing. This will be in writing, and will contain details of the time, date and location of the hearing, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.

6.5. If witnesses are to be called to give evidence at the hearing, these must be advised prior to the hearing.

6.6. A HR advisor (appointed by the School) should be present at the hearing to advise the Headteacher or Governors on matters of process, procedure and employment law.

6.7. The procedural format of the hearing is detailed in Annex 2.

6.8. The purpose of the hearing is for the Headteacher or the Directors' panel to determine one of the following outcomes:

- that the matter be referred back to the Senior Leader to review, with any recommendations for further action, or;
- that the employee be dismissed on a date which will normally follow the standard notice period, based on considering the evidence, recommendations and representations presented at the hearing.

6.9. The outcome of the hearing will normally be advised verbally to the employee at the end of the hearing, and this will then be confirmed in writing, advising of the right to appeal the decision, the time limits for appealing and to whom this appeal should be addressed.

6.10. Any appeal must be in writing within five working days of the formal meeting. The appeal notification must state the grounds on which the appeal is made.

6.11. Where possible, the appeal will be heard within 20 working days of receiving the appeal, and will be heard by a Governors' appeal panel. This panel will consist of two or three Governors, who have not previously been involved in the dismissal decision.

6.12. At least five working days' notice will be given of a capability appeal hearing. This will be in writing, and will contain details of the time, date and location of the hearing, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.

6.13. The outcome of the appeal hearing will normally be advised verbally to the employee at the end of the hearing, and this will then be confirmed in writing, advising the employee that they have no further right of appeal.



## **7 Referral**

7.1. The School will follow the Department of Education's procedures on referring teachers who are subject to capability procedures, to the Teaching Agency.

## **8 Redeployment/demotion**

8.1. If during the capability procedure the individual requests to transfer to an alternative job, with the terms and conditions of employment relevant to that role, this may be considered as an alternative to a dismissal hearing.

8.2. For this to happen, there must be an appropriate vacant role available.

8.3. The Senior Leader link, line manager of the individual and the line manager for the post to which they wish to be transferred must be in agreement that the individual has proven skills, experience, knowledge and aptitude to be successful in the new role.

8.4. Should all parties be in agreement, then the individual will be considered to have resigned from their substantive post, so that no salary safeguarding will apply, should the salary be lower than that of their substantive post.

8.5. If there are no other suitable alternatives available, the capability procedure will continue as outlined above. There is no obligation for the school to create a role.

8.6. Where the individual accepts an alternative role, any formal warnings will remain on their personal file. The capability procedure will cease and usual performance management, review and monitoring procedures will apply for the new role.

8.7. Where there is evidence of serious concerns about an individual's performance in the new role, the formal capability procedure will be followed. The individual will enter the procedure at the formal capability review stage (where a final written warning will be issued), irrespective of where they were in the process in their previous role. The appeal processes described above will apply. Please refer to section 5.

## **9 Sickness absence**

9.1. If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's Sickness Absence Policy and Procedures.

9.2. Usually this will include referring the individual to the Occupational Health Service, to seek further advice on the individual's health, and how the formal capability process and procedures should be managed on their return to work.

9.3. Any return to work discussions for individuals who have been absent due to long-term sickness, who have entered the capability procedures, should refer to the process and how this will be managed, how timelines may be adjusted to accommodate and support a full return to work.

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

## **10 Newly Qualified Teachers (NQTs)**

### **10.1. NQTs employed after 1 September 2012**

10.1.1. The Department of Education announced in April 2011 their intention to consider the current arrangements for statutory induction for newly qualified teachers (NQTs).

10.1.2. In April 2012 the department consulted on revised statutory guidance to accompany these regulations. The new regulations come into force in September 2012.

## **11 Grievances**

11.1. Where an individual raises a grievance during the capability procedure, the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

## **12 Roles and responsibilities**

### **12.1. The role of the Headteacher**

12.1.1. The role of Headteacher is to ensure that this policy is applied fairly and consistently across the School.

12.1.2. The Headteacher, with the assistance of other Senior Leadership colleagues, will review capability information, including the effectiveness of this policy and, where required, report to the Governing Body.

12.1.3. The Headteacher will be made aware of pay decisions and recommendations that may have been affected by this process.

12.1.4. The Headteacher is responsible for ensuring that professional, effective HR advice is provided to line managers and to Governors' panels.

12.1.5. The Headteacher will delegate all relevant administration processes, including ensuring that records are retained appropriately.

12.1.6. The Headteacher will monitor how the capability policy has been used and report to Governors.

12.1.7. The Headteacher will ensure there is training provision for this area of people management.

12.1.8. The Headteacher will inform all staff of the policy which has been adopted.

### **12.2. The role of the Governing Body**

12.2.1. The Governing Body is committed to ensuring that this policy is applied consistently and fairly.

12.2.2. The Governing Body will ensure that all written appraisal records are retained in a secure place for the required period of time and then destroyed.

12.2.3. The Board of School Directors will monitor, evaluate and review policies in line with statutory and best practice guidelines, including equality legislation.

12.3. The role of the employee/other staff

12.3.1. Line managers and Senior Leaders are responsible for ensuring that they have undertaken sufficient training and have sought advice from HR.

12.3.2. All employees should focus their efforts, skills and knowledge to undertake their role to the best of their ability. All staff are expected to access a range of support provided by the school, and this is detailed in the school's CPD policy.

12.3.3. All employees are required to keep the details of any capability procedure confidential. Only those involved in the procedure that need information to fulfil their professional role will be made aware of an individual situation. Any party involved in a capability procedure should be aware that breaching this confidentially could lead to disciplinary action.

### **13 Monitoring and evaluation**

13.1. This process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and the Governing Body to quality-assure the operation and effectiveness of the systems. For example, the Headteacher, or an appropriate member of the Senior Leadership group may review the documents and records taken during the process before a recommendation is made to refer a decision to a capability hearing.

13.2. This policy should be reviewed at least every two years to ensure compliance to legislation, school needs, national and local terms of employment and good practice.

13.3. Any reviews to this policy will be in consultation with staff, including representatives of unions and associations recognised by the School.

## **Annex 1.**

### **Timeline for the complete capability procedure**

Evidence gathered by line manager

Formal capability meeting (5 days' notice period)

4 – 6 week review

Formal capability review meeting (5 days' notice)

2 – 3 weeks into the 4 – 6 week review

Formal decision meeting (10 days' notice)

Capability hearing (10 days' notice)

## Annex 2. Capability hearing procedures

In the room at the start of the hearing should be:

- the employee and their representative
  - the line manager, or other representative of the School with, where possible, HR advisor
  - either the Headteacher or a Director's panel of two or three Directors
1. The Chair of the panel makes introductions, describes the reason for the hearing, outlines the procedure to follow and informs the employee (or their representative) of their right of adjournment at any time during the hearing.
  2. All documentation relevant to the hearing should have been submitted by both the school and the employee prior to the hearing. Occasionally new information is presented on the day of the hearing. If this is the case, the chair of the panel has the option of accepting new information. There is no requirement to accept new information, and the decision to accept will usually be based on the quantity of information, and the length of adjournment required for all parties to read and consider the information. The Chair should seek advice from their HR advisor.
  3. The Senior Leader presents the case for the School. This case outlines the capability procedure followed and refers to any documentation presented to the panel. The School presents their witnesses (if applicable) to support their case and to respond to questions.
  4. After presenting their case the line manager can be cross-examined by the employee (or their representative) and members of the Directors' panel. Witnesses can also be cross-examined by the employee, or any member of the Directors' panel.
  5. The employee, or their representative, will then present their case. The employee presents their witnesses to support their case and to respond to questions.
  6. After presenting their case the employee can be cross-examined by the line manager, or Directors' panel. It should be noted that the employee's representatives may participate in the hearing in support of the employee, including asking appropriate questions, but may not answer questions on the employee's behalf. Witnesses can also be cross-examined by the employee, or any member of the Directors' panel.
  7. After hearing both cases the Chair should confirm with the panel whether they have further questions for any party. The Chair will then inform both parties of their right to an adjournment before summing up their case.
  8. The school representative (Senior Leader) sums up the School's case. No new evidence should be presented at this stage.
  9. The employee sums up their case. No new evidence should be presented at this stage.
  10. Usually the Chair will suggest an adjournment while the panel members review and consider the information presented.
  11. The panel decides on a course of action, and is able to seek clarity on issues of procedure, process and employment law from their HR advisor.

12. The Chair calls both parties back into the room and informs all parties of the decision and any relevant course of action. Where possible the Chair summarises the factors that have contributed to their decision.
13. The Chair points out that the decision will be confirmed in writing and, if appropriate, refers to any right of appeal.