



Sheet Primary School

Making a difference for every child.

## SP19: Performance Management and Capability Policies

Owning Committee: FGB

Owning Governor:

Owning School rep: Headteacher

Date of Approval: January 2024

Date of next review: January 2027

### AIM OF DOCUMENT:

To provide the best possible support and development for all staff in the school so that the quality of teaching is at least “good” and that appropriate professional development pathways are in place for all staff.

**IN EVENT OF CONCERN/QUESTIONS:** Contact the owning governor, contact details available through the school administrator.

### HOW DOES THIS DOCUMENT HELP THE CHILDREN?

All staff are well trained, highly motivated and able to provide the very best for the children.

### MONITORING PLAN FOR POLICY:

Monitoring governors will review Headteacher’s reports on staff training and performance management to the Governing body. Monitoring governors are also part of the performance management team for the Head.

V1	First version approved by FGB	May 2010
V2	Approved by the Resources committee	March 2012
V3	Approved by staff	Sep 2012
V4	Approved Resources committee	March 2015
V5	No changes approved by resources committee	Jan 2017
V6	Hants Model Performance Management and Capability Policy joined as one document	March 2021
V7	Model policy reviewed to include MOPP updates	Jan 2024

## **1. PERFORMANCE MANAGEMENT - Policy Statement**

- 1.1. This policy and procedure have been consulted upon with the recognised trade unions and professional associations for Hampshire maintained schools. Where Hampshire maintained schools wish to localise this policy and procedure further, consultation will need to take place with staff and representatives of the recognised unions and professional associations. This policy and procedure are commended to academies and other schools which have freedom to develop their own policy and procedure, although such schools which wish to adopt this policy and procedure are advised to take this through their own negotiation/ consultation framework.
- 1.2. This procedure does not form part of any employee's contractual terms and conditions. Any links within this document to other documents are for ease of use and do not form part of this procedure.
- 1.3. This policy and procedure have been written keeping to the Model Pay Policy contained in the Manual of Personnel Practice. Schools that have chosen to adopt an alternative pay policy will need to make relevant adjustments.
- 1.4. Schools should make sure that employees clearly understand the ethos of the school and that performance management arrangements are in place to support employees to achieve their individual and school aspirations. It should be recognised that there is a collective responsibility to achieve these goals. The Capability Policy and How to Guide is a supportive process aimed at generating sustained improvement.
- 1.5. Leaders should make sure the Career Expectations Framework is understood by all teaching staff and performance management reviewers. This includes how it may be used to support decisions in relation to their performance and pay. The framework should be shared at the start of the performance management cycle.

## **2. Scope**

- 2.1. This document sets out the framework for a clear and consistent assessment of the overall performance of employees, including the Headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of teachers and other staff. It also sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.
- 2.2. The Model Performance Management Policy is for all employees working within a school/school managed provision or establishment (which for ease of reference are referred to throughout this document as 'schools'), with the exception of those employees on contracts of less than one term, those undergoing formal induction (i.e. ECT's), and those who are subject to the Capability Policy

## **3. Principles**

- 3.1. Performance management in this school will be a supportive and developmental process designed to make sure that all employees have the skills and support they need to undertake their role effectively. It will help to make sure that all employees are able to continue to improve their professional practice and to develop in their careers.
- 3.2. The process of setting and reviewing performance objectives for staff in schools is an integral part of the school's overall approach to school improvement and development. Performance objectives will

be written in such a way that they complement and link to the targets expressed in the school improvement/development plan.

- 3.3. It is important to recognise that the objectives set for any member of staff will not represent the complete job that the individual is expected to perform. Reviewing performance is about measuring the progress made against the objectives set with appropriate support, which will represent key priorities for that individual, and in addition, assessing and recognising the overall performance of that person in the job, including an assessment against any relevant standards/accountabilities.
- 3.4. The career expectations framework and associated Teachers Standards and Headteacher Standards guidance are designed to outline what good performance can look like for teachers at different stages of their career. Neither are a checklist and it is not intended that teachers will meet all of the detail under the rating in order to achieve that rating. They provide guidance for both reviewers and reviewees as to what good performance broadly should look like, but reviewees should be made aware of these frameworks where they are being used at the start of their performance management cycle.
- 3.5. There is no correct number of objectives to set for any member of staff. The number will depend on the role they undertake, the relevant priorities for that person at that time and the nature and complexity of each objective set.
- 3.6. The process of performance management will be carried out keeping to this policy, which is underpinned by the statutory regulations for teachers and local agreements for support staff.
- 3.7. Performance management will be carried out in such a way to make sure consistency of treatment and fairness.
- 3.8. The Governing Body and Headteacher will monitor the operation and effectiveness of the school's performance management arrangements.
- 3.9. The performance management process will be treated with confidentiality. Normally only the reviewer, reviewee and the Headteacher will have access to performance management information and documentation relating to the reviewee. However, to enable moderation of objectives and assessments to take place, paperwork may be shared with members of the Senior Leadership Team keeping to the School's Pay Policy. Governors may request an anonymised sample of performance management statements to enable them to perform their role in monitoring the effectiveness of the school's performance management system.
- 3.10. The Governing Body and Headteacher will make sure that all written performance management records are retained securely in line with the County Council retention schedule and then destroyed.
- 3.11. Where an employee's performance is affected by a health problem and/or sickness absence, the matter will normally be dealt with keeping to the school's Absence Policy and How to Guide. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work.
- 3.12. When assessing an employee through the performance management process, factors such as any periods of ill health, or maternity leave, will be taken into account as this may affect an employee's ability to meet their objectives.
- 3.13. The audio or video recording of any meetings held under this procedure is not normally permitted. Where an employee is unable to take their own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording

of the meeting as an alternative. In such cases, consideration will be given as to whether recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

#### **4. The Performance Management Cycle**

- 4.1. The performance management cycle for the Headteacher and all teachers will run for twelve months, with the end of year review being completed by October for teachers, and by December for the Headteacher, in reference to the previous academic year. The performance management cycle for support staff will run for twelve months with the end of year review being completed by December, in reference to the previous academic year or current financial year (use whichever applies). Employees who are employed on a fixed-term contract of less than one year will have their performance managed keeping to the principles underpinning this policy. The length of the period will be determined by the duration of their contract.
- 4.2. Employees who are employed on a fixed-term contract of less than one year will have their performance managed keeping to the principles underpinning this policy. The length of the period will be determined by the duration of their contract.
- 4.3. The performance management cycle will link to the pay arrangements for employees. In the case of teaching staff, the end of year review and the annual pay determination will take place by the end of October each year (December for the Headteacher) and is informed by the performance management cycle concluding at the end of the previous academic year (31 August). In the case of support staff who are performance managed via the Individual Performance Planning (IPP) process, the end of year review will be completed by December in order for decisions about pay to be made, effective from 1 April each year.

#### **5. Appointing reviewers**

- 5.1. The Headteacher's performance will be reviewed by the Governing Body, supported by a suitably skilled external adviser who has been appointed by the Governing Body for that purpose.
- 5.2. In this school the task of reviewing the Headteacher, including the setting of objectives, will be delegated to a sub-group consisting of 3 members of the Governing Body. The appointed governors will be known as the Headteacher Performance Management Committee (HPMC).
- 5.3. Given the close working relationship between the Headteacher and the Chair of Governors, it would not normally be appropriate for the Chair of Governors to be part of the HPMC.
- 5.4. The Headteacher will decide who will review the performance of other teachers and support staff, however this will normally be the employee's line manager. The Headteacher will decide whether the reviewer also makes a recommendation about pay progression, keeping to the school's Pay Policy. The Headteacher has the discretion to delegate the review process to other employees who will normally be line managers. Reviewers will have the necessary knowledge and training in order to undertake this role.
- 5.5. Where performance concerns arise (see section 10), the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role of reviewer themselves.

#### **6. Setting Objectives**

- 6.1. The Headteacher's objectives will be set by the Governing Body after consultation with the external adviser. At least one of the targets for the Headteacher will relate to outcomes for pupils.

- 6.2. Objectives for each employee will be set before, or as soon as practicable after, the start of each performance management cycle. In setting objectives, reviewers will have regard to what can reasonably be expected given the employee's role and level of experience, as communicated in the school's Pay Policy. The level of expectation of an employee's performance must also be communicated at the outset of the performance management cycle. For example, where the School has been explicit that to achieve their improvement plans teaching needs to be good or above, this expectation must be clearly communicated to all staff through the school's ratings of performance as defined in the school's Pay Policy.
- 6.3. The objectives set for each teacher will, if achieved, contribute to the school's plans for improving educational provision and performance and improving the education of pupils at the school, and will take into account the outcomes for pupils. Objectives will also take into account the professional aspirations of the employee.
- 6.4. Objective setting will have regard to a reasonable level of expectations of the employee in the context of work/life balance.
- 6.5. Before, or as soon as practicable after, the start of each performance management cycle, each teacher will be informed of the standards, objectives and success criteria against which their performance in that performance management cycle will be assessed. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year. For teaching staff this will include having regard to the relevant section of the Career Expectations Framework and associated Teachers' Standard guidance. It should be made clear to reviewees that the Career Expectations Framework and Teachers' Standards guidance provides a broad overview of what can constitute good performance at each career stage, rather than a checklist.
- 6.6. Before, or as soon as practicable after, the start of each performance management cycle, each member of support staff will be informed of the key accountabilities against which their performance in that performance management cycle will be assessed, for example those contained within the role profile applicable to that employee. In addition, the reviewer and reviewee will agree the reviewee's development plan for that year.

## **7. Reviewing Performance**

- 7.1. Evidence
- 7.2. A number of sources of evidence will be used to assess an employee's performance. These include those detailed below. Such evidence will be triangulated in order to undertake an overall assessment of the employee's performance. This will include their performance against their objectives and against the relevant standards/key accountabilities for their role.
- 7.3. Observation
- 7.4. This school believes that observation of classroom practice and other responsibilities is important both as a way of assessing the performance of classroom-based employees in order to identify any particular strengths and areas for development they may have, and of gaining useful information which can inform school improvement more generally. Therefore, feedback from lesson observations will be developmental and not simply a judgement. All observation will be carried out in a supportive manner.
- 7.5. In this school classroom-based employees' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the employee and the overall needs of the school at that time. Classroom observation of teachers will normally be carried out by those with QTS. In addition to formal observation, the Headteacher or other leaders with responsibility for standards in the classroom may "drop in" in order to evaluate the standards of

teaching and to check that high standards of professional performance are established and maintained. The length and frequency of “drop in” observations will vary depending on specific circumstances.

- 7.6. Observations are a snapshot in time and reviewers will use the information gathered from these alongside other types of evidence to make judgements about performance.
- 7.7. As soon as practicable after an observation and within 2 working days, verbal feedback will be given to the employee. This will be followed up with written feedback within 3 working days of the observation taking place. Where it is not reasonably practicable to provide feedback within these timescales, feedback will be provided at the earliest opportunity thereafter.
- 7.8. Teachers (including the Headteacher) who have responsibilities outside the classroom, and support staff who are not classroom-based, will also have their performance of those responsibilities observed and assessed.
- 7.9. Observations undertaken by Ofsted inspectors or as a result of local authority monitoring will not, in themselves, be used for performance management purposes. However, these observations may highlight the need for the school to undertake separate observations for performance management purposes, for example if a lesson is rated as inadequate by Ofsted. Observations undertaken by a local authority officer may be used in performance management where this has been planned and communicated to all parties in advance.
- 7.10. Pupil progress and attainment
- 7.11. Rates of pupil progress and levels of attainment as pertinent to the teacher’s role will be used in assessing a teacher’s performance against the Teachers’ Standards and, where relevant, against objectives.
- 7.12. The HPMC, with advice from the External Adviser, will review levels of pupil attainment, rates of pupil progress and whole school performance in their assessment of a Headteacher’s performance in addition to other objectives that may have been set.
- 7.13. Where support staff are providing support to groups or individual pupils, the progress and attainment of those pupils may be taken into account in assessing the performance of the employee. This will only be used alongside other evidence which supports the level of contribution of the employee to the progress and attainment of pupils.
- 7.14. Work Sampling
- 7.15. Work sampling may be used in assessing teacher performance against the standards for the role, and where relevant, against objectives.
- 7.16. Other Evidence
- 7.17. Other evidence may be considered, where it is pertinent to the objectives set and the standards/accountabilities for the role.
- 7.18. Examples of such evidence may include (but are not limited to):
- 7.19. Teachers:
  - Medium and long-term planning.
  - Effective deployment and management of classroom-based support staff.
- 7.20. The Headteacher:
  - Evidence from reports from external sources such as Ofsted, the local authority, or other reviews.
  - Other performance data (for example from DfE).

#### 7.21. Support staff

- A sample of written correspondence produced (administrative staff).
- A sample of budget correspondence (finance staff).
- A sample of health and safety monitoring (site staff).
- Examples of displays and resources prepared (classroom-based support staff).

7.22. It may also be appropriate to consider evidence such as feedback from colleagues, including peers, and for line managers, their staff.

#### 7.23. Feedback

7.24. Employees will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength and celebrate success, as well as any areas that need development and support. Where there are concerns about any aspects of an employee's performance, this will be managed keeping to Section 10 of this policy.

#### 7.25. Annual Assessment

7.26. Every employee's performance will be formally assessed in each performance management cycle. In assessing the performance of the Headteacher, the Governing Body will consult the external adviser.

7.27. This assessment is the end point of the annual performance management process, but performance and development priorities will be reviewed and addressed, on a regular basis throughout the year in interim meetings which will take place (insert frequency, e.g. once per term).

7.28. An employee will receive a written performance management statement as soon as practicable following the end of each performance management cycle. The employee will have the opportunity to comment on this. Teachers will receive their written performance management statement by 31 October (31 December for the Headteacher). Support staff will receive their performance management statement by [date]. The performance management statement will include:

- an assessment of the employee's performance of their role and responsibilities against their objectives in the last performance management cycle;
- an assessment of the employee's performance of their role and responsibilities against the standards/accountabilities for their role in the last performance management cycle;
- summary of the evidence considered to support the decisions made;
- a performance management rating
- a recommendation on pay based on performance in the last performance management year (where staff are eligible for progression).

7.29. The employee will also receive a new performance management statement for the new performance management cycle. This will include:

- details of the employee's objectives for the new performance management cycle;
- details of the standards/accountabilities to apply in the new performance management cycle;
- an assessment of the employee's current training and development needs and identification of any action that should be taken to address them in the new performance management cycle;
- an indication of when monitoring will take place.

7.30. The assessment of performance against the objectives and standards will tell the planning process and training and development needs for the next performance management cycle.

7.31. All staff and reviewers are encouraged to also use performance management meetings to discuss other matters pertinent to their employment.

- 7.32. With the exception of the Headteacher pay recommendation, all pay recommendations arising out of the performance management process must be approved by the Headteacher before being shared with the individual member of staff to whom the recommendation relates and before being referred to the governors' pay committee. The HPMC must also refer their recommendation to the governors' pay committee.
- 7.33. Pay progression for all staff will be as set out in the school's Pay Policy.
- 7.34. Moderation of Performance Management Statements
- 7.35. The Headteacher will take responsibility, where the reviewer role has been delegated, for ensuring there is an appropriate system in place to moderate performance management statements and pay recommendations, to make sure consistency and equality of treatment.

## **8. Performance ratings and pay outcomes for teaching staff**

- 8.1. A determination about performance will directly impact pay progression where eligible, as outlined below:
- Exceptional performance: 2 points salary progression
  - Achieved expectations: 1 point salary progression
  - Not met expectations: No salary progression
- 8.2. Please refer to the school's pay policy for definitions against these ratings.

## **9. Performance ratings and pay outcomes for support staff**

- 9.1. A determination about performance will directly impact pay progression where eligible, as outlined below:
- Exceptional performance: 1 step progression plus 3% one-off payment (in exceptional circumstances, 2 step progression may be awarded instead of 1 step plus 3% one-off payment)
  - Achieved expectations: 1 step progression
  - Improvement required: 0 steps progression
- 9.2. Please refer to the school's pay policy for definitions against these ratings.

## **10. Dealing with Performance Concerns**

- 10.1. The majority of employees are competent in their role for the majority of the time. On occasions, however, an individual's performance can be deemed to be below accepted standards and support is needed to help them re-attain and sustain the required level of performance.
- 10.2. There may be reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent. Consideration must be given to whether reasonable adjustments are appropriate
- 10.3. Concerns about performance will be addressed at the time they are identified and not left to the employee's next performance management meeting. This will assist the employee to recognise issues at an early stage.
- 10.4. Performance concerns may be identified by the reviewer or by a Senior Manager/Headteacher. Where a concern is identified that is likely to require structured managerial support (10.16), the Headteacher may re-delegate the reviewer role to a senior manager or undertake the role



themselves. A reviewer must notify the Headteacher where they identify performance concerns and agree with the Headteacher how to proceed.

- 10.5. Concerns about the performance of the Headteacher may be identified by an individual or combination of sources. Where a concern is identified via the HPMC, the Chair of the HPMC must notify the Chair of Governors. Where the initial concern is identified by the Chair of Governors, they must notify the Chair of the HPMC. In both circumstances, the Chair of the HPMC will review the evidence available with the School Improvement provider to decide how to proceed.
- 10.6. Where it is necessary to take forward a performance concern for the Headteacher, this will be undertaken by the HPMC, with professional advice from the School Improvement provider, and the Chair of Governors will be kept apprised of the situation.
- 10.7. When raising performance concerns with an individual, the Headteacher/Senior Manager/HPMC will take into account any factors which may be having an impact on the employee's ability to perform their duties. However, such factors in themselves do not negate the need to address performance concerns.
- 10.8. While there are no formal rights of representation at this stage, employees are encouraged to contact their professional association or trade union representative for advice and support.
- 10.9. Identifying when performance is below accepted standards
- 10.10. The Headteacher/Senior Manager/HPMC may consider a member of staff to be underperforming where:
  - the standard of performance falls below that which is required to meet or make progress towards a specific performance management target; and/or
  - the standard of performance falls below that which is required to meet the expectations of a particular role in their school; and/or
  - the performance falls below the relevant standards/accountabilities for the role; and/or
  - the overall school performance falls below that which is required (in the case of the Headteacher).
- 10.11. If the Headteacher/Senior Manager has evidence to show that an employee is no longer meeting the expectations of their role, these concerns will be addressed with the individual promptly.
- 10.12. Where the school has clearly communicated a level of expectation, the Headteacher and senior managers may consider a member of staff to be underperforming if they are not reaching this level of expectation.
- 10.13. Determining possible initial courses of action
- 10.14. Depending on the severity of the underperformance, the Headteacher/Senior Manager/HPMC need to take a view as to the proportionate response. This may include:
  - an early conversation to confirm the expected standards of the role;
  - coaching/mentoring support;
  - structured managerial support;
  - consideration of application of the Capability Policy (exceptional circumstances or concerns).
- 10.15. An early conversation and coaching/mentoring support will only be used on their own to support low level or early stage concerns where these may be an effective measure. Where the performance concern is more significant or continues, structured managerial support will normally be put in place.
- 10.16. Structured managerial support

10.17. Where a performance concern has been identified that requires extra support, a discussion will be held between the Headteacher/Senior Manager/HPMC and the employee. The outcome of the meeting will be to identify what steps will be taken to assist the employee to improve their performance and move to the required standard. (In cases involving the Headteacher, the HPMC will normally invite the School Improvement provider to give support at this meeting.) The discussion will include:

- what area(s) of performance is/are of concern;
- what improvement is required/the standard the employee needs to meet;
- the timescales in which this is to be achieved (these will vary depending on the issues identified);
- the support that will be provided to assist the employee;
- how frequently the performance/progress will be monitored and reviewed;
- the seriousness of the issue and potential consequences of improvement not being achieved, including potential impact on pay progression.

10.18. The employee will be invited to provide their point of view on the shortfall in performance and whether they believe there is an underlying reason. The employee will also be asked to identify what support they feel they need in order to achieve the required improvement, and the Headteacher/Senior Manager/HPMC will indicate what support they intend to put in place.

10.19. The key outcomes of the discussion will be recorded in writing and shared with the individual. The written record of the discussion will be placed on the individual's personal file and a copy given to the employee.

10.20. Review meetings will be held at the agreed timescales to review progress towards targets set and the appropriateness of the support being given. At these meetings, any improvements will be communicated to the individual as well as the remaining gap between their current level of performance and the expectations set. The outcome of these meetings will also be recorded in writing and a copy shared with the individual.

10.21. The purpose of any structured managerial support programme is to assist the employee to achieve the necessary improvement within the agreed timescales. Where this is successful the Headteacher/Senior Manager/HPMC will confirm this at the relevant review meeting and record this in writing to the employee. The employee will be informed that the improvement in their performance must be sustained.

10.22. If the employee is not making the necessary progress towards the required improvement, the employee will be informed that failure to achieve this may lead to the Capability Policy being applied and that there may be an impact on their pay progression. The Headteacher/Senior Manager/HPMC will make a judgement about when to communicate this given that it may not be appropriate to do so during the first discussion. However, if a move to the Capability Policy is a likely outcome, the potential for this must be communicated to the member of staff in good time. It must be recorded in writing that the employee has been informed of the potential consequences should their performance not meet the required standard. If the necessary improvement is then not achieved within the agreed timescales, the Headteacher/Senior Manager/HPMC will need to consider use of the formal stages of the Capability Policy.

10.23. Where the employee has initially made the required improvement but this performance has not been sustained independently over a six month period, the Headteacher/Senior Manager/HPMC will need to consider use of the Capability Policy.

10.24. By-passing structured managerial support

10.25. In most circumstances a structured managerial support programme will be put in place before the Capability Policy being used. However, the Headteacher/Senior Manager/HPMC may decide after taking advice from Education Personnel Services that it is appropriate to move straight to the formal stages of the Capability Policy, in exceptional circumstances, for example:

- the employee's performance is putting the health and safety of pupils and/or staff at risk;
- the employee's performance is putting the education of pupils in serious jeopardy;
- the employee's performance has not been sustained independently for 6 months at an accepted level following an earlier managerial support programme.

10.26. Transition to the Capability Policy

10.27. At any time during provision of structured managerial support, the Headteacher/Senior Manager/HPMC may consider transition to the Capability Policy. The Headteacher/Senior Manager/HPMC will have specific regard to:

- the nature and severity of the underperformance;
- the impact on pupils and colleagues both in the short and longer term;
- the likely and required timescale for improvements to be made;
- the engagement of the employee in the programme.

10.28. In a typical case, if a structured management support programme has been in place and the issues have not resolved after a period between four school weeks and half a term then it would be appropriate to consider moving onto the Capability policy. However, when determining how long to allow before moving onto the Capability policy, the Headteacher/Senior Manager/HPMC will give consideration to the circumstances of the case, in particular the factors listed under paragraph 10.26.

10.29. To move to the Capability Policy the Headteacher/Senior Manager/HPMC will follow the process outlined in the Capability Policy and How To Guide, inviting the employee to attend a meeting under stage one of the Capability Policy where all the relevant information will be considered and a decision made about next steps.

10.30. Should the Capability Policy commence, performance management will be suspended.

## 11. Governance

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Owner	Education Personnel
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# 1. CAPABILITY Purpose

This school expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. The school acknowledges that there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

This policy aims, through advice and support, to improve to an acceptable level as set by the school, the performance of the employee who is causing concern.

This policy defines how the school will manage an employee if they are unable to perform to the required standards. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an employee's role and/or a deliberate lack of care, the matter will be dealt with under the school's Disciplinary Procedure as this is a conduct concern.

Further guidance is available in the How to Guide and this must also be referred to. Please note that the section numbering in the Capability Policy and the How to Guide – Capability are not aligned.

## 2. Scope

This policy applies to:	<ul style="list-style-type: none"><li>• Teachers including leadership, upper pay range, main pay range and unqualified teachers</li><li>• Support staff</li></ul>
This policy does not apply to:	<ul style="list-style-type: none"><li>• Volunteers</li><li>• Contractors</li><li>• Agency workers</li></ul>

This policy is non contractual and does not form part of any employee's terms and conditions.

Employees that have been subject to a TUPE into the School may be excluded from this policy where they have transferred under a contractual policy. In such cases, the employee should refer to their own contractual policies and procedures.

Employees with less than two years' service may be subject to a shortened procedure.

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The school expects all parties to maintain confidentiality

throughout the application of the policy.

### **3. Performance management**

**Performance management** The school will manage an employee's day to day performance with the Performance Management Policy.

**Annual review of performance** Every employee will have an annual review of their performance. The review process enables an employee's performance to be monitored and assessed.

**Pay progression** If an employee is unable to perform to the required standards of the role, this may have an impact on their annual pay progression.

### **4. Managing capability**

**Considerations** The manager must consider whether to start the capability process if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent.

There may be exceptional circumstances when the manager and/ or employee anticipate a long-term capability concern. This may happen due to the employee's health or a disability. In these circumstances, it is anticipated it is unlikely that the employee can achieve the required level of performance. Consideration must be given to whether reasonable adjustments are appropriate. The line manager must seek advice from Education Personnel Services in such cases.

Poor performance due to health problems and/or sickness absence will normally be dealt with via the school's Sickness Absence Policy and Procedure. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work. In some cases, it may be appropriate for the Capability Policy to continue during a period of sickness absence, however the headteacher/senior manager/Headteacher Performance Management Committee (HPMC) will have regard to the views of Occupational Health.

Where an employee wilfully and unreasonably refuses to co-operate with the application of the Capability Policy, the matter will be dealt with under the Disciplinary Policy.

Prior to the implementation of this policy, the headteacher/ senior manager/HPMC will normally need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the employee and, as appropriate, provide structured managerial support designed to facilitate improvement.

This procedure aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:

- from within the school;
- through accessing expertise in another school;
- via the local authority's advisory services;
- from other expert sources external to the school;
- through training courses or events.

## **Policy stages and principles**

The possible stages are:

- Stage 1
- Stage 2
- Stage 3 - may result in dismissal
- appeal after each stage.

There is a shortened procedure for employees with less than two years' service, as detailed in [Appendix One](#).

In exceptional circumstances, it may be appropriate to move into the Capability Policy without having provided a period of structured managerial support. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

The employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.

Responsibility for decision-making within this procedure rests with the headteacher/senior manager/HPMC, and the headteacher/Governors' Committee where convened. If the governing body has delegated to the headteacher the power to dismiss, the headteacher will not normally be able to fulfil that role where he/she has had substantial involvement in the earlier stages of the procedure.

Where this procedure is used in relation to headteacher poor performance, the HPMC will undertake the role of headteacher/senior manager. In such cases, an additional professional adviser from the school's school improvement provider will be present, at any stage, to provide governors with professional advice.

The time periods in this procedure will also apply to part-time employees.

## **5. Stages of the Policy**

Reference must be made to the **How to Guide - Capability for the full procedural information.**

**Meetings/ hearing arrangements**

At each stage of the policy, the employee must be invited to attend a meeting/ hearing.

The employee must receive in writing the invitation to the meeting/hearing.

The letter must give the employee **5 working days'** notice of the meeting/hearing.

**Formal record of the meeting/ hearing**

A formal record must be taken during the meeting/hearing. This may be made by audio recording the meeting/hearing or by a note taker. It is the school's responsibility to make the appropriate arrangements.

If an audio recording takes place, a copy of the recording must be retained by the school. The school must comply with all relevant retention and storage requirements.

For governor hearings in maintained schools, there remains a legal requirement to have a written record of the meeting of the Governor Committee.

**Alternative date**

The school expects that the employee and their representative will make all reasonable efforts to attend the first scheduled meeting/hearing date and time.

If it is not possible, the employee may propose an alternative date and/ or time. This should be within **5 working days** of the original meeting/hearing.

The meeting/hearing will be rescheduled.

**Sharing of information**

The manager and employee are required to exchange all relevant papers and supporting evidence in advance of the meeting/hearing. Management documents will be supplied with



the invitation letter. The employee will be provided with a copy of this policy.

The employee or their representative must submit all relevant papers and supporting evidence to arrive with the chair at least **3 working days** before a meeting/hearing.

### **Right of representation**

The employee has the right to be represented/ accompanied at a formal meetings/hearings or appeal meetings. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

### **Attending meetings/ hearings**

If the employee is not well enough to attend the meeting/ hearing, it may be deferred until they are able to attend. A meeting/ hearing will not be deferred indefinitely because the employee is unable to attend.

### **Outcome of a meeting/ hearing**

The chair of the meeting/hearing must fully consider all evidence presented and decide on an outcome.

A written warning may be issued and this can be:

- a first written warning of 12 months OR
- a final written warning of between 12 – 24 months
- **For employees with less than two years service** - a final written warning of between 12 – 24 months.

At a Stage 3 hearing the employee may be dismissed on the grounds of performance capability.

The chair must confirm the outcome in writing within **5 working days** of the meeting/hearing. A copy of the outcome letter and

any warning must be placed on the employee's personnel file.

If the outcome is dismissal, any sums owing to the school from the employee will normally be deducted from their final pay.

### **Review meetings**

Following a meeting/hearing under Stage 1 or Stage 2, the manager must hold scheduled review meetings with the employee.

### **Progression through the stages**

The manager can progress to the next stage and re-enter the stage at the appropriate point if:

- the employee's performance does not meet the standard required
- there is a further performance concern even though this may be different to a performance concern(s) referred to in a previous stage
- if an improvement is not sustained for a 12 month period following a Stage 1 meeting
- if an improvement is not sustained for a 12 - 24 month period following a Stage 2 meeting
- the employee has not found an alternative role

### **Written warnings**

A first formal warning given as part of the application of this procedure will lapse at the point when the headteacher/senior manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within 12 months from the date of such a decision, the headteacher/senior manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the headteacher), may re-enter the procedure at the appropriate point in Stage 1.

Where a final warning has been issued, this will lapse at the point when the headteacher/senior manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within a period of two years (six terms) from the date of issue, the headteacher/senior manager/HPMC, following consultation with Education Personnel Services (or

HIAS in the case of the headteacher), may re-enter the procedure at the appropriate point in Stage 2 at any time during this two-year period.

## 6. Appeal stage

Reference must be made to the **How to Guide - Capability for the full procedural information.**

<b>Appeal stage</b>	The employee has the right to appeal against the outcome of a meeting/hearing under any stage of this policy.
<b>Right of appeal</b>	<p>The employee must submit their appeal in writing within <b>10 working days</b> following receipt of the written outcome of the meeting/ hearing. This must include the full reasons for the appeal.</p> <p>Following an appeal of a Stage 3 hearing, there is no further right of internal appeal.</p>
<b>Appeal meeting</b>	The employee must be invited to attend a meeting. The employee must be given <b>7 working days'</b> notice of the meeting.
<b>Meeting arrangements</b>	The principles of <a href="#">meeting arrangements</a> will apply.
<b>Formal record of the meeting</b>	The principles of the <a href="#">formal record of the meeting/ hearing</a> will apply.
<b>Alternative date</b>	The principles of <a href="#">alternative date</a> will apply.
<b>Sharing of information</b>	The principles of <a href="#">sharing of information</a> will apply.
<b>Right of representation</b>	The principles of the formal stage <a href="#">right of representation</a> will

apply.

### **Outcome of the appeal meeting**

The chair must fully consider all evidence presented and decide on an outcome.

The outcome cannot impose a higher sanction than issued at the original meeting/hearing.

The chair must advise the employee of the outcome at the appeal meeting unless otherwise agreed. The outcome must be confirmed in writing within **5 working days** of the meeting.

A copy of the outcome letter must be placed on the employee's personnel file.

## **7. Gross Incompetence**

**Reference must be made to the How to Guide – Capability for the full procedural information.**

### **Definition**

**Gross incompetence** - occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role. The outcome is that this causes or has caused serious harm or puts others (colleagues, general public or service users) or the school's reputation and performance at serious risk.

Gross incompetence only applies in exceptional circumstances. The manager must seek advice from Education Personnel Services in such cases.

### **Policy stages**

The possible stages are:

- Stage 3 hearing - may result in dismissal
- appeal.

**Suspension or alternative arrangements**

Before making a decision about suspension or alternative arrangements, the appropriate manager must seek advice from Education Personnel Services.

Suspension or alternative arrangements are neutral and precautionary acts. They may be considered at any point during this policy once it is established that the circumstances may be gross incompetence.

The appropriate governance arrangements must be adhered to in deciding whether suspension or alternative arrangements are appropriate.

During suspension or alternative arrangements, the employee must adhere to all relevant requirements.

Written confirmation of the decision regarding suspension must be provided to the employee.

Suspension or alternative arrangements must be regularly reviewed.

There is no right of appeal against the decision to apply alternative arrangements or suspension.

**Stage 3 hearing**

The principles of the Stages of the Policy will apply.

**Hearing arrangements**

The principles of [meeting/ hearing arrangements](#) will apply.

**Formal record of the hearing**

The principles of the [formal record of the meeting/ hearing](#) will apply.

**Sharing of information**

The principles of [sharing of information](#) will apply.

**Alternative date**

The principles of [alternative date](#) will apply.

<b>Right of representation</b>	The principles of the formal stage <a href="#">right of representation</a> will apply.
<b>Attending a Stage 3 hearing</b>	The principles of <a href="#">attending meetings/hearing</a> will apply.
<b>Outcome of the Stage 3 hearing</b>	The principles of <a href="#">outcome of the meeting/hearing</a> will apply.
<b>Appeal</b>	The principles of the <a href="#">appeal stage</a> will apply.

## 8. Other Policy Requirements

Reference must be made to the **How to Guide – Capability for further information relating to this section.**

**Confidentiality**

It is expected that all parties involved in the capability process will maintain confidentiality as appropriate. This is both within and outside of the school (including social media). Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.

If any party does not maintain confidentiality action may be taken under the Disciplinary policy.

**Right of Representation**

Employees are actively encouraged to contact their professional association/trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The employee has the right to be represented/ accompanied at a formal stage meeting/hearing or appeal meeting. This can be by a professional association/trade union representative or a work colleague.

It is the employee's responsibility to:

- arrange their own representative
- liaise with their representative to agree the meeting/hearing or appeal meeting date and time
- advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

**Referral to Occupational Health/ medical practitioner**

It may be necessary to refer the employee to Occupational Health/medical practitioner to obtain medical advice and information.

If an employee does not co-operate with the referral, any assessment or decision taken will be based on the information available.

**Alternative roles**

Reasonable support to find an alternative role can be offered to an employee as a means of helping them to find alternative employment, either within the school, Hampshire County Council or externally.

**Requirement for the school to pass on information about a teacher's capability to a new employer**

A headteacher or teacher may apply for a job with an alternative employer. The employee may have been subject to the Capability Policy within two years prior to starting a job with a new employer. In such cases, the school must notify the new employer.

**Safeguarding concern (relating to vulnerable adults, children and young people)**

The school may take action under the Capability Policy for reasons that relate to a safeguarding concern. Such cases must be dealt with in accordance with Hampshire's Child Protection procedures. This ensures that a child, young person or vulnerable adult is not at risk or that a police or social care investigation is prejudiced.

Advice must be sought from Education Personnel Services.

**Referral to relevant bodies**

In the following circumstances it may be necessary to make a referral to the relevant body:

- if a dismissal takes place
- in circumstances where a process regarding a

capability concern has not concluded and the potential outcome may have resulted in dismissal.

Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that a referral has taken place.

For further guidance please contact Education Personnel Services.

**Mutual agreement**

As an alternative to a meeting/hearing under this policy, the school and the employee may discuss a mutual agreement. The contract of employment may be ended by mutual agreement between the employee and the school.

There is no right to appeal a mutual agreement as it is entered into with the consent of both parties.

**Fast track procedure**

In very serious cases, a final warning may be issued at a Stage 1 meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the manager can proceed to a Stage 3 hearing.

Further advice must be sought from Education Personnel Services.

**Action – professional association/ trade union representative**

Where there are concerns involving a professional association/ trade union representative, the school must notify and seek advice from Education Personnel Services before taking action.

**Representation from EPS and/or the local authority**

The school will have the right to request that an officer from Education Personnel Services attends any meetings under Stages 1 or 2 of the Capability Procedure, in order to provide support to the senior manager/headteacher/HPMC.

Education Personnel Services will have the right to attend a meeting held under Stage 3 of the Capability Procedure in Hampshire Maintained Schools (other than in Voluntary



Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.

## 9. Policy Governance

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