



# Red Hall Primary School

## Capability Procedure

| <b>Status</b>                | <b>Date</b>  |
|------------------------------|--|
| Date Issued:                 | April 2010   |
| Reviewed by:                 | Avec Partnership – Summer 2020   |
| Description of changes:      | Amended to reflect Equality Act 2010 and GDPR 2018<br>Removed Guidance reference |
| Date reviewed by the School: | 29 <sup>th</sup> September, 2020   |
| Next review date:            | Summer Term 2022   |

### 1. POLICY STATEMENT

1.1 Red Hall Primary School values all its employees and appreciates the essential role they play in delivering high quality education to the children and young people.

1.2 The School also recognises that employees at all levels need to know the standard of job performance expected of them, as good performance is crucial to any employment relationship. Unfortunately, there may be cases where employees do not meet expected standards.

1.3 The School will aim to address such cases informally in the first instance. However, if the informal process has been tried unsuccessfully, or where the situation is considered to be of a more serious nature, the School will use a formal process. Both the informal and formal procedures are set out in this policy.

## 2. EQUALITIES

2.1 In applying this policy, the Head Teacher will take into consideration the School's Equality Scheme and will not unlawfully discriminate in respect of any of the protected characteristics as defined under the Equality Act 2010 and specified below:

- a. Age
- b. Disability
- c. Gender reassignment
- d. Marriage and civil partnership
- e. Pregnancy and Maternity
- f. Race
- g. Religion or Belief
- h. Sex
- i. Sexual Orientation

2.2 Disability under the act covers physical and mental impairments that have a substantial and long term adverse effect on an individual's ability to carry out normal day-to-day activities. If an employee is affected by a disability or any medical condition which affects their ability to undertake their work, they should discuss this with the Head Teacher. Please see **Reasonable Adjustments** section for further information in relation to disability.

2.3 The provisions of this policy may be dis-applied or varied where this is reasonable in order to comply with the act and/or to avoid discrimination in respect of any of the protected characteristics specified above.

## 3. INTRODUCTION

3.1 This policy and the related procedures aim to:

- help employees to improve their job performance wherever possible to meet the standard required
- help the School to deal with such cases as quickly and effectively as possible
- promote fairness and transparency by providing written procedures that are specific, clear and applied consistently
- provide an alternative route to the disciplinary procedure

3.2 They replace all previous capability policies and procedures, which have been adopted by the School.

#### **4. DEFINITION**

4.1 This policy and the related procedures apply in cases of poor performance which are not covered under the Disciplinary Policy or the separate arrangements for employees under probation.

4.2 It will usually apply where an employee is unable to improve, despite his or her best efforts. This could be because the employee is lacking in knowledge, skill or ability. The School will aim to help the employee to improve his / her job performance so that s/he is able to meet the standard required.

4.3 If there is any possibility that the poor performance may be linked to illness, injury or other physical or mental impairment, this procedure must be suspended whilst advice is sought from the School's Occupational Health Service.

#### **5. SCOPE**

5.1 This policy and the related procedures apply to all School employees.

5.2 It should also be noted that day-to-day managerial supervision of and guidance to employees is outside the scope of this policy.

#### **6. GENERAL PRINCIPLES**

6.1 The School recognises the importance of dealing with capability cases fairly. As such:-

- the emphasis will be on dealing with issues informally before moving into the formal capability procedure
- however, where matters cannot be resolved informally, or where actions are considered to be of a more serious nature, the formal procedure will be followed
- a constructive approach will be taken to achieving improved work performance and standards through effective supervision, monitoring, support, training and performance review
- employees have the right to be accompanied at all stages of the formal procedure by their trade union representative, workplace colleague or friend of their choice who does not have a conflict of interest. The School will consider a request for legal representation where professional registration may be at risk or there is the possibility of referral to a statutory organisation (in which case the School will also have access to legal representation)
- an employee will have the right to appeal against any formal sanction
- the School will raise and deal with issues promptly and not unreasonably delay meetings, decisions or confirmation of those decisions

- before the commencement of any capability process there should be demonstrable evidence of poor performance
- employees will be given reasonable and proportionate timescales in which to achieve satisfactory improvement of tasks in which they are under-performing. Such timescales will be appropriate to the job and work cycles
- when setting timescales the manager will consider the level of any additional training necessary to achieve the required standards of performance
- it is recognised that the capability process is difficult for employees managed under this policy and appropriate support should be given and achievements recognised

## 7. RESPONSIBILITY

7.1 **Head Teacher and the Governing Body** are responsible for ensuring that this policy and the related procedures are implemented effectively in the School. They should ensure that managers with staff management responsibilities have had appropriate training on the application of the policy.

7.2 **Employees with staff management responsibilities** have primary responsibility for managing effective job performance in their teams. Use of performance management processes, supplemented by regular meetings to discuss day-to-day performance, should help to establish an ongoing positive working relationship between managers and their team members. Ideally, this should prevent capability issues from occurring in the first instance.

7.3 **Employees** must acknowledge that good job performance is a crucial part of any employment relationship and accepted as the norm. As such, they must take whatever action is necessary to improve their performance and be open to and act upon constructive feedback. They must comply with this policy and the related procedures as appropriate.

7.4 The School's HR provider are responsible for advising managers on effective case management. Relevant HR staff may advise managers, the Head Teacher and Governing Body at informal or formal meetings, if required.

## 8. AUTHORISED OFFICERS

8.1 **Suspensions** from duty can be authorised by the Head Teacher or Chair of the Governing Body. Suspensions can only be lifted by the Chair of the Governing Body or a committee of the Governing Body.

8.2 The relevant levels of authorisation for each stage of the procedures are summarised in the table below:

| <b>Stage of the Procedure</b>   | <b>Authorised Officer</b>   | <b>Appeal Hearing Officer</b>  |
|---|---|--|
| Informal<br>(as part of supervision and performance management processes) | Immediate line manager or Head Teacher or other nominated manager | No right of appeal   |
| Formal review meeting and monitoring                                      | Immediate line manager or Head Teacher or other nominated manager | No right of appeal (but the employee may raise a grievance if they have clear grounds that the decision to move to the formal stage is unfair) |
| Capability Hearing  | Committee of the Governing Body (Committee A)                     | Committee of the Governing Body (Committee B)  |

## **9. THE CAPABILITY PROCEDURE**

### **Informal Process – Management Guidance**

- 9.1 Unsatisfactory performance could be due to a range of issues such as a lack of skills, inadequate training, lack of support, equipment or other resources, or problematic working relationships.
- 9.2 The School will seek to resolve capability issues informally wherever possible before moving into the formal capability procedure. In many cases, early identification of problems may lead to an improvement in an employee's performance to the required standard, without recourse to the formal procedure.

### ***Initial Meeting, Monitoring and Review***

- 9.3 The manager will make the employee aware of unsatisfactory performance at the earliest possible opportunity and try to identify the reason(s) for this. This may be done as part of normal supervision, one-to-one process or relevant performance management arrangements. However, managers should consult the Head Teacher before instigating the informal process.
- 9.4 This involves managers talking to the employee in a two-way conversation aimed at discussing unsatisfactory performance and encouraging improvement. Employees themselves may also recognise problems and request a discussion with the manager.
- 9.5 Although the employee does not have a legal right to representation at this stage of the process, both this and HR involvement may be recommended in certain cases.
- 9.6 The manager will provide factual examples and evidence of the unsatisfactory performance and will listen to the explanation given by the employee.

9.7 An Improvement Plan will be drawn up with, and issued to, the employee either at or after the meeting.

9.8 The Plan will give a realistic timescale during which the improvement is required. Such timescales will be appropriate to the job and work cycles, with regular monitoring meetings in between. It is recommended that there is a review meeting held in the middle of the review period to which the HR representative and the employee's representative may be invited if appropriate.

9.9 The employee will be expected to make adequate preparation for the meetings and to cooperate with and access any assistance provided or suggested. The manager will advise the employee if satisfactory progress is not being achieved against the Improvement Plan and the Improvement Plan may be amended if appropriate.

9.10 The manager will make clear what the likely outcome will be if satisfactory performance is not achieved and sustained. They will also advise if incremental progression will be affected at this stage.

### ***Final Review Meeting***

9.11 This will be held at the end of the monitoring period between the manager and the employee to discuss progress made against the Improvement Plan.

9.12 At this meeting, the employee will need to demonstrate what steps s/he has taken and any impact that these steps have had in terms of improving his / her performance.

9.13 The manager will confirm if the employee's performance has reached the required standard or not.

### ***Improvement to Required Standard***

9.14 If the employee's performance has improved to the required standard, the manager will:

- acknowledge the improvements achieved
- confirm that the improvements will need to be sustained
- confirm the discussions in writing

9.15 A further meeting will be then be arranged as appropriate to the job and work cycles to ensure that the improvements are being sustained.

### ***Failure to reach Required Standard***

9.16 If the employee's performance has not improved to the required standard, the manager will inform the employee of this and provide factual information and evidence of the reasons supporting this conclusion.

- 9.17 The manager will also inform the employee in writing that the matter will now progress to the formal stage of the procedure and that there may be an impact on incremental progression. They must make the employee aware as sensitively as possible that continued failure to meet the required standards of performance may result in a formal Capability Hearing, which may in turn lead to termination of employment on capability grounds. Performance Management arrangements for teachers will be suspended at the point of entry into the formal procedure.
- 9.18 If the employee has made significant improvement against the Plan but has not achieved all targets the manager may agree to extend the period of the informal stage if it is believed that all targets can be achieved in a reasonable timescale.

## **Formal Process**

### ***Formal Review Meeting, Monitoring and Review***

- 9.19 A formal meeting will be arranged between the manager and the employee. The employee will be notified of this meeting in writing and informed that they will be entering the formal process on the date of the meeting. The purpose of the meeting will be to review the Improvement Plan actioned at the informal stage.
- 9.20 There is no right of appeal against a decision to move to the formal stage of the process. However, the employee may raise a grievance if they have clear grounds that the decision to move to the formal stage is unfair.
- 9.21 The meeting will be held without unreasonable delay, whilst allowing the employee reasonable time to prepare their case. The School will give at least 7 calendar days' / 5 working days' prior notice of the meeting and of the employee's right to be accompanied.
- 9.22 The employee's manager will conduct the meeting, accompanied by the School's HR provider if necessary.
- 9.23 At the meeting, the Improvement Plan will be updated to reflect the current position and revise any timescales/actions etc. A monitoring period will be set for the formal process, which will be appropriate to the job and work cycles and will not usually exceed one term but may be shorter if this is reasonable in the circumstances. Any other options available will also be discussed. It is recommended that there is review meeting held in the middle of the review period to which the HR representative and the employee's representative may be invited if appropriate.
- 9.24 The employee will be given the opportunity to explain any reasons for his / her underperformance, identify any support mechanisms that have not already been put in place and suggest any other support that may help them to improve.
- 9.25 The manager must make the employee aware as sensitively as possible that continued failure to meet the required standards of performance may result in a formal Capability Hearing, which may in turn lead to termination of employment on capability grounds and if incremental progression is to be affected in this case.
- 9.26 The updated Improvement Plan will be issued to the employee following the meeting with a cover letter outlining the discussions.

9.27 The employee's performance will be monitored formally throughout the given timescale, during which time the manager will provide the employee with ongoing guidance on their progress towards reaching the improvement(s) required.

9.28 At the end of the formal monitoring period, the manager will arrange a further meeting with the employee.

### ***Final Review Meeting***

#### *Improvement to Required Standard*

9.29 If the employee's performance has improved to the required standard, the manager will:

- acknowledge the improvements achieved
- confirm that the improvements will need to be sustained
- confirm the discussions in writing

9.30 A further meeting will then be arranged within a timescale appropriate to the job and work cycles to ensure that the improvements are being sustained. If they are, the formal process may end and the manager will continue to monitor the employee's performance as normal via the relevant appraisal process, supplemented by regular meetings to discuss day-to-day performance.

9.31 However, if the employee's performance subsequently dips, the manager may revert to the relevant part of the formal procedure, as appropriate in each case (including a formal Capability Hearing if necessary).

#### *Failure to Reach Required Standard*

9.32 If the employee's performance has not improved to the required standard, the manager will inform the employee of this and provide factual information and evidence of the reasons supporting this conclusion. They will also discuss the impact on incremental progression if relevant.

9.33 Any other options available will also be discussed (i.e. voluntary redeployment - see section 13).

9.34 The manager will confirm that a Capability Hearing will be arranged with Committee A. This decision will be confirmed in writing.

9.35 The manager must make clear to the employee that the Capability Hearing is the final stage of the capability process and could result in the termination of his / her employment.

### ***The Capability Hearing***

9.36 A formal Capability Hearing will be arranged to consider the employee's capability to meet and maintain the performance standards required of their role.

- 9.37 The meeting will be held without unreasonable delay, whilst allowing the employee reasonable time to prepare their case. The School will normally give at least 7 calendar days' / 5 working days' prior notice of the meeting in writing and of the employee's right to be accompanied.
- 9.38 The Hearing will be conducted by Committee A of the Governing Body. A HR Representative will advise Committee A.
- 9.39 The letter will state the purpose of the Capability Hearing, outline of the nature of the unsatisfactory performance and include the documentation (and witness statements where applicable) to be used at the Capability Hearing,
- 9.40 It will also advise the employee of the need to provide any evidence that s/he wishes to be considered at the Hearing preferably at least 7 calendar days' / 5 working in advance but at least 48 hours prior to the Hearing and the need for the employee to give the name(s) and capacity of any witnesses they wish to call to the Hearing in support of their case.
- 9.41 If any supplementary evidence to be considered at the Hearing is submitted by either party after this timescale, both sides must receive copies prior the Hearing and Committee A will ultimately decide if this can be considered.
- 9.42 Where possible, the employee's representative should be consulted about the date and time of the Hearing. If the representative cannot attend on the proposed date, an alternative time and date will be arranged ideally not more than five working days after the original date.
- 9.43 Employees and their representatives should make every effort to attend the Hearing on the date given. In the event that the employee or representative does not attend, the Hearing may proceed in their absence and a decision made, based on the evidence available.
- 9.44 The procedure to be followed at the Capability Hearing is given in the guidance to this policy. Committee A will conduct the proceedings and give full consideration to all the information available, including any mitigating factors presented and will aim to give their decision at the end of the Hearing. This will be confirmed in writing within 5 calendar days.

### ***Possible Outcomes***

#### ***No further Action Required***

- 9.45 Where Committee A believes that the employee has reached the required standard of performance and is capable of maintaining this standard, no further formal action will be required. This outcome will be confirmed in writing to the employee.

#### ***Management Guidance***

- 9.46 Committee A may decide that the required standard has been reached but that specific management guidance should be provided to ensure that this standard is maintained. If management guidance is required, arrangements will be made to provide this at the

earliest opportunity. Such guidance may be a written procedure which must be followed, specific timescales or deadlines for completing of work etc.

9.47 The details will be confirmed in writing for information if performance issues arise in the future. There is no right of appeal against the issue of management guidance.

### ***Formal Written Warning and Formal Monitoring***

9.48 Where Committee A believes that the employee has not reached the standard required for the role but there is a realistic probability that the employee will be able to achieve this in a short timescale (appropriate to the job and work cycles), the employee will be issued with a formal written warning and informed of the area for improvement and the level of performance required. This warning will remain valid for capability purposes for 24 months from the date of the Hearing. The employee will also be informed of the impact on incremental progression if appropriate.

9.49 The employee will also be informed of the right of appeal and that further underperformance could result in their dismissal on capability grounds if the required standard is not achieved.

9.50 Following a formal written warning, formal monitoring will continue for a period appropriate to the job and work cycles.

9.51 At the end of the formal monitoring period, a review meeting will be held with the Head Teacher to assess if the employee's performance has improved to the required standard.

### ***Improvement to Required Standard Achieved***

9.52 If the employee's performance has improved to the required standard, the manager will:

- acknowledge the improvements achieved
- confirm future expectations for performance
- confirm the previous formal written warning

9.53 After the expiry of the formal written warning period, the warning will be ignored for the purpose of the employment relationship in general (i.e. for promotion, or selection for training courses or for disciplinary action) providing the employee's performance has been sustained at the required standard.

9.54 However, details will not be removed from the personal file as they form a valid record of employment history which will be referred to should performance issues arise in the future.

### ***Failure to Reach the Required Standard***

9.55 If the employee's performance has not improved to the required standard at the end of the monitoring period, a further Capability Hearing will be arranged, as previously specified in this policy.

### ***Dismissal with Notice***

9.56 After full consideration of all the facts and evidence at the Capability Hearing, Committee A may conclude that the employee has not been able to reach the required standard of performance; that s/he will not be able to do so and that as such, their employment will be terminated on the grounds of capability with appropriate notice.

9.57 The Committee will make a recommendation to the Director of Children and Adult's Services.

9.58 Confirmation of the recommendation will be made in writing within 5 working days of the Hearing, including details of any proposed referral to an appropriate body, if applicable.

9.59 The dismissal letter will be sent by the Director of Children and Adult's Services which will specify the reason for the dismissal, the notice period and the right of appeal.

### ***Redeployment***

9.60 An opportunity for redeployment may be considered. However, Committee A must make clear to the employee that such redeployment can only be considered if a vacancy exists or arises during the notice period and if the employee meets the essential criteria for the vacant post.

9.61 Any redeployment will be subject to an appropriate trial period, which will be identified when the alternative employment is offered. If the alternative employment is not successful within the trial period, the Hearing will be re-convened with the original Committee A if possible.

9.62 This is likely to result in employment being terminated with appropriate notice and subject to a right of appeal.

9.63 Any redeployment will be with the agreement of the employee and in accordance with section 13 of this policy.

9.64 There is no right of appeal against a decision to move to the formal stage of the process. However, the employee may raise a grievance if they have clear grounds that the decision to move to the formal stage is unfair.

9.65 An employee can lodge an appeal against a formal written warning and / or dismissal. The Appeal must be in writing and sent to the Chair of Committee A within 5 working days of receipt of written confirmation of the decision and must include reasons for the appeal.

9.66 Appeals will be heard without unreasonable delay and ideally at an agreed time and place. Committee B will review impartially the decision taken. They may be advised by an HR representative.

9.67 The employee will be given preferably at least 7 calendar days' / 5 working days notice of the date of the Hearing and has the right to be accompanied.

9.68 The decision of Committee B is final.

9.69 Committee B will confirm the decision to the employee in writing within 5 working days of the Appeal Hearing.

## **10. SUSPENSION**

10.1 In extreme cases (e.g. where an employee is under the capability procedures and their performance at work is having a negative or damaging impact on the people in their care), the employee may be suspended from work. However, this will only be considered where temporary alternative employment is not available or appropriate.

10.2 Suspensions may be made at any point during the capability procedure, should this become necessary and will usually progress straight to a Hearing.

10.3 The period of suspension will be on full pay, will be as brief as possible and without prejudice. It will also be kept under review and the manager concerned will write to the employee to explain the reason(s) for any delay(s) whilst a Hearing is being arranged.

## **11. INCREMENTAL PROGRESSION**

11.1 Where incremental progression applies, it may be withheld when an employee is under the capability procedure. Incremental progression will not be withheld where the element of pay to which incremental progression applies is not related to the area of performance to which the capability process applies e.g. a mainscale teacher with a TLR who is performing well in the classroom but is experiencing difficulties performing their management role. Employees will be notified in writing of any impact on incremental progression prior to the increment becoming due.

## **12. QUALIFICATIONS / CONTINUOUS PROFESSIONAL DEVELOPMENT (CPD)**

12.1 Where an employee no longer has the appropriate qualifications or accreditations that are essential to continue in his/her job role, the Head Teacher will consider whether adjustments can be made to existing duties so that the employment can continue within service constraints.

12.2 Where the qualification or accreditation in question is fundamental to the employee's duties and they cannot continue without them, the manager will consider if there is any training which can be provided which will enable them to achieve the appropriate qualification within reasonable timescales and costs or if suitable alternative employment is available. Where this is not possible, a Capability Hearing will be convened and the possible outcome could be termination of employment.

## **13. REDEPLOYMENT**

13.1 Employees can ask to be considered for alternative employment at any stage in the capability procedure. The Head Teacher may also ask if the employee wishes to consider alternative employment opportunities.

13.2 Employees will be considered for redeployment within their own School.

13.3 Redeployment can only be considered if a suitable alternative vacancy is available and the employee has the necessary essential skills to undertake that role. Redeployment opportunities will not necessarily be to an equivalent post or earnings level and current earnings will not be protected. There is no automatic right to alternative employment at any stage in the capability procedure.

#### **14. ILLNESS / ABSENCE DURING THE CAPABILITY PROCEDURE**

14.1 If there is any possibility that the poor performance may be linked to illness, injury or other physical or mental impairment, this procedure must be suspended whilst advice is sought from the School's Occupational Health Service.

14.2 Where an employee is absent from work due to illness, the School will seek advice from their Occupational Health Service on the employee's ability to go through the process before progressing the case further.

14.3 If the employee's absence from work occurs during the course of the capability procedure, the School will also seek advice from Occupational Health on the employee's fitness to attend meetings, Hearings, Appeals etc.

14.4 The School's Sickness Management Policy and procedures will continue to be implemented as normal throughout any capability process. The School will seek to keep the employee at work wherever possible through temporary redeployment etc.

#### **15. REASONABLE ADJUSTMENTS**

15.1 The Equality Act 2010 requires employers to make reasonable adjustments for disabled employees. This means, wherever possible, removing barriers, including physical features and working practices, that might get in the way of a disabled person doing his or her job effectively, or otherwise being placed at a substantial disadvantage.

15.2 It is important that the Head Teacher consider whether any capability issues may be disability-related before taking capability action.

15.3 In terms of making reasonable adjustments when implementing capability procedures, the Head Teacher should consider the following in relation to the employee concerned:-

- a) ensuring that all meetings / Hearings are held in accessible locations
- b) ensuring that the employee has adequate support at meetings etc.
- c) ensuring that information is in an accessible format (i.e. do not assume that the information can be provided in the same standard written format for all).
- d) accessing advice / clarification from School's HR provider / occupational health as appropriate

#### **16. OVERLAPPING GRIEVANCE CASE**

16.1 In managing capability issues, the School will not allow grievances put forward by the employee concerned to delay the process unnecessarily.

16.2 Although there is no right of appeal against a decision to move to the formal stage of the process, the employee may raise a grievance if they have clear grounds that the decision to move to the formal stage is unfair.

16.3 If an employee raises a grievance during the capability process, the School may decide to temporarily suspend the capability process in order to deal with the grievance. However, where the grievance and capability cases are related, the School may decide that it is appropriate to deal with both issues concurrently.

## **17. DISCIPLINARY ACTION**

17.1 If at any stage the Head Teacher has reason to believe that the under performance is due to poor conduct or lack of effort on the part of the employee, s/he will stop the capability process and may invoke formal disciplinary action.

17.2 The employee will be informed of the change in procedure and reminded of the right to representation.

17.3 In these cases the Head Teacher is advised to take advice from the School's HR provider before taking action.

## **18. EMPLOYMENT TERMINATED WHILST PROCESS ONGOING**

18.1 The School reserves the right to conclude the capability process after the employment has terminated. In such cases, employees will be informed of the outcome of the process in writing, including details of referral to an appropriate body, if applicable, and given copies of relevant paperwork

## **19. TRADE UNIONS**

19.1 The School's recognised trade unions have been consulted in the development of this policy. They will accompany, support and represent their members at any meetings, Hearings and Appeal Hearings forming part of the formal process.

## **20. TRAINING**

20.1 It is important that all employees, including all levels of management, understand the rules and procedures for dealing with capability issues. The School will provide training on this policy where relevant.

## **21. WRITTEN RECORDS**

21.1 Details of all capability cases and subsequent action taken will be retained on the employee's personal file held in accordance with the [General Data Protection Regulations 2018](#) and other legislative provisions.

## **22. CONFIDENTIALITY**

22.1 All employees involved in or with knowledge of capability issues must conduct themselves appropriately and treat all information confidentially and in accordance with their role in the process. Information will only be shared with relevant parties.

## **23. REFERENCES**

23.1 The School will disclose information regarding current capability issues being dealt with under the formal stages of the policy when requested to do so for the purpose of employment references.

## **24. MONITORING AND REVIEW**

24.1 The School will keep this policy and the related procedure under review to make sure they are relevant and effective.

24.2 The School's recognised trade unions will be consulted before new or additional rules are introduced.

## **25. ADVICE**

25.1 For further advice on this policy, please contact the Head Teacher or if the Head Teacher has any concerns regarding the practical application, please contact the School's HR Provider.