

# THE WESTGATE SCHOOL

Hampshire's First 4-16 'All Through' School

*"The Westgate School is a community of learners where partnerships inspire success for all:  
learning together – achieving excellence"*

Headteacher: Mrs F A Dean, MA (Ed)

Initial Policy date	November 2007	Next scheduled review	February 2024
Governor approved	February 2023	Key person/people	HT
Model Policy	Yes (MOPP v2.1 Mar 22)	Model localised	Yes (MOPP)
Pupil leadership team review		<del>Y</del> / <del>N</del> / N/A	

## CAPABILITY POLICY

### 1. 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 Disciplinary Procedure as this is a conduct concern.

Further guidance is available in the How to Guide (available on MOPP) 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 colleagues</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

<b>Performance management</b>	The school will manage an employee's day to day performance with the Performance Management Policy.
<b>Annual review of performance</b>	Every employee will have an annual review of their performance. The review process enables an employee's performance to be monitored and assessed.
<b>Pay progression</b>	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 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.
<b>Outcome of the appeal meeting</b>	<p>The chair must fully consider all evidence presented and decide on an outcome.</p> <p>The outcome cannot impose a higher sanction than issued at the original meeting/hearing.</p> <p>The chair must advise the employee of the outcome at the appeal meeting unless otherwise agreed. The outcome must be confirmed in writing within <b>5 working days</b> of the meeting.</p> <p>A copy of the outcome letter must be placed on the employee's personnel file.</p>

## 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.



<b>Stage 3 hearing</b>	The principles of the Stages of the Policy will apply.
<b>Hearing arrangements</b>	The principles of <a href="#">meeting/ hearing arrangements</a> will apply.
<b>Formal record of the hearing</b>	The principles of the <a href="#">formal record of the meeting/hearing</a> will apply.
<b>Sharing of information</b>	The principles of <a href="#">sharing of information</a> will apply.
<b>Alternative date</b>	The principles of <a href="#">alternative date</a> 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.**

<b>Confidentiality</b>	<p>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 an employee, 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.</p> <p>If any party does not maintain confidentiality action may be taken under the Disciplinary policy.</p>
<b>Right of Representation</b>	<p>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.</p> <p>The employee has the right to be represented/ accompanied at a formal stage meeting/hearing or</p>

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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# Appendix One - Managing Capability for employees with less than two years' service

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

## Managing Capability

### Policy stages

The possible stages are:

- formal meeting – may result in dismissal
- appeal only against a dismissal.

As a general principle the manager will seek to provide structured managerial support under the Performance Management policy, before using the Capability Policy.

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.

### Formal Meeting

The principles of the [Stages of the policy](#) will apply.

### Appeal stage

The principles of the [appeal](#) section will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

## Gross Incompetence

### Gross incompetence

The principles of [gross incompetence](#) will apply.