NORTH WALES SCHOOLS MODEL POLICIES

Capability Policy

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Document Control

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1.0 Capability Policy and Procedure

1.1 Purpose

The Governing Body of this school is committed to providing high standards of education to pupils. It is therefore reasonable to expect all employees to achieve and maintain an acceptable standard of performance, in undertaking their particular role.

The expected standard should be appropriate for the professional standards relevant to the post and the skills and experience that are reasonable to expect from the employee in accordance with their job description The school is committed to providing support to employees to achieve the expected standards.

The purpose of this policy is to:

- Provide a framework that provides support for employees to achieve the required level of performance, where informal support via the professional development or usual management process has not resulted in the necessary improvement.
- Maintain and where possible, improve the standards of work performance of an individual employee, through a constructive approach such as effective supervision, advice, coaching, guidance and support.
- Ensure that all employees are treated in a fair, consistent and understanding manner with any capability issues.
- Ensure that the School is a fair employer, meeting all relevant legal requirements regarding any capability decisions it might make about any employee.
- Support managers, head teachers and Governors in carrying out their responsibilities for the maintenance of high standards of work performance by all employees.
- Help protect the school, its employees and pupils from the consequences of poor work performance.
- To ensure the primary objective is to assist and support the employee to improve to the required standard.

Nothing within this policy is intended to prevent the normal process of supervision and management whereby managers allocate work, monitor performance, draw attention to improvements required, provide support when required and highlighting work done well. This ongoing process may include informal assistance in achieving improvement to required standard of work for the particular post. Such discussions are not part of the procedure outlined in this policy, with formal interviews and representation not being appropriate during this everyday ongoing process.

1.2 Scope

This policy applies to all employees who are appointed by the Governing Body e.g. salaries are charged directly to the School's budget.

This procedure will not apply to;

- Newly qualified Teachers who are subject to specific monitoring and support procedures during their period of induction. Any capability issues would be addressed within these procedures.
- Support staff during their probationary period. Support staff are subject to a six month probationary period and any capability issues should be addressed within the probationary procedure.
- Supply/relief/casual workers or fixed terms/temporary employees engaged/appointed for less than a term or two half terms.

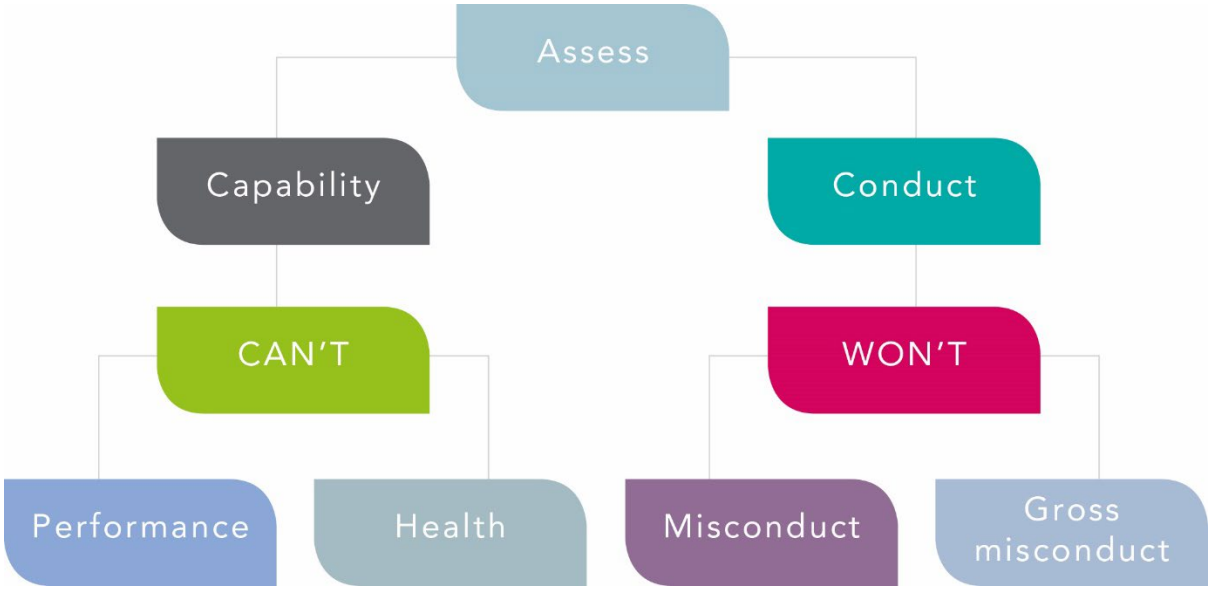
2.0 Policy Principles

2.1 Prior to the policy's implementation, the school should raise concerns about under-performance with the employee and measures should be agreed upon to support improvements in their performance. Nothing in this procedure is intended to prevent headteachers/managers from dealing with employees' day to day performance issues should they arise. Early identification of problems and appropriate intervention and support through effective management will help to avoid the need for capability procedures at a later date. Informal discussions are therefore vital in preventing problems from developing. It is expected that most matters are resolved informally.

2.2 The emphasis in this procedure is placed on trying to support the employee to achieve a satisfactory level of work performance, including meeting professional standards, through training, coaching, goal setting and progress monitoring through the performance improvement plan. This support will also take into account elements of a role, for example, a Head of Department or member of the leadership team, may not be meeting the standards of performance in one aspect of the role, but may be achieving acceptable standards in their teaching in the classroom. Areas of the job role that requires improvement should be clearly stated to the employee and recorded in the Performance Improvement Plan.

2.3 In most cases, performance issues will be discussed informally with the employee and their headteacher/manager. Only if matters are more serious, or informal arrangements have not resulted in acceptable improvement, will more formal measures be applied. For teachers, the expectation is that this would be instigated/commenced by the Headteacher. For Headteachers, this would be instigated/commenced by the Chair of Governors.

2.4 In dealing with cases of poor work performance, we distinguish between those where the reason is within the employees control (e.g. negligence, lack of application or poor attitude) and those where the reason is outside of the employee's control (e.g. health, lack of training or aptitude/ability or the changing nature of the role).



2.5 Failure to comply with clear advice and instruction or negligence, which involves inadequate performance where thought to be attributable to wilful disinclination by the employee to carry out their duties effectively will be dealt with under the schools disciplinary procedure. Examples of this may include action or inaction which contravenes the rules laid down by the particular employer or the EWC code of professional conduct and practice.

2.6 Health Related Capability

Long and short term absence will be managed under the Schools Managing Attendance Policy, however if an employee is able to attend work and has a health condition/s which are affecting their performance then this policy would be used to support the employee. Full consideration to making reasonable adjustments and providing appropriate support would need to be given, utilising advice from Occupational Health and giving full consideration to the Equality Act before implementing this policy. Adjustments to the capability procedure may be appropriate in some cases.

Equality Act 2010

When reviewing an employee's performance, consideration must be given to the **Equality Act 2010**. This defines a disabled person as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day to day activities. Long-term means that the effect of the impairment has lasted or is likely to last for at least 12 months. Where an employee has a disability or medical condition that is considered under the Equality Act 2010, the Headteacher/Manager will ensure that reasonable adjustments are made to help such employees carry out their job, and to have the same opportunities to perform well and develop during their employment as any other employee. Reasonable adjustments to the process or policy may also be appropriate.

2.7 Right of Appeal – Employees have the right to appeal against all formal warnings issued during the procedure, however they must not delay the ongoing nature of the process, as no procedure should automatically have precedence over the other. The employee will be expected to continue to work towards the targets identified in their performance improvement plan while arrangements are made for the appeal hearing to be held.

2.8 An employee may be accompanied / represented by a work based colleague or a trade union representative under the formal stages of this policy.

2.9 Attendance at meetings and hearings

Meetings associated with this procedure may only be postponed on grounds of self-certified (up to seven calendar days) or medically certified illness. Subsequent arrangements may proceed in the absence of the employee if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the outcomes of the meeting will be provided to the employee.

If an employee fails to attend an arranged hearing for reasons that are outside of their control and unforeseeable when the hearing was arranged, the hearing will be rearranged in the first instance. If the reason for non-attendance was due to circumstances that were foreseeable or within the employee's control, the hearing will continue in the employee's absence.

If the date is inconvenient it should be made explicit in writing that an alternative date may be offered within five school days of the first date. If the second date is inconvenient then the employee and their representative must be informed that the meeting will go ahead in their absence, and advised they can ask their representative to attend or submit their case in writing for consideration.

2.10 Absence during the capability procedure

For long term absence, it may be appropriate to seek advice from the Occupational Health Department, to assess whether the employee is fit for continued employment. The school will take a considerate and sympathetic approach to any employee reporting absence, but in general, the length of time necessary to wait for an employee's health to improve before considering whether to terminate should be subject to Occupational Health advice and/or taking into account the circumstances, in line with Attendance Management procedures.

Short term absences should not unreasonably delay any part of the formal stage of the procedure but review periods may be extended by up to a maximum of one week to accommodate this, unless a reasonable adjustment due to disability is required. Reasonable steps should be made to enable the employee to attend formal meetings, but in the event of a short term absence, the meeting may be postponed once and heard within five school days.

2.11 Confidentiality

Performance matters should be dealt with sensitively and with due respect for the privacy of the individuals involved. All parties must treat as confidential any information communicated to them in connection with a matter which is subject to capability procedures.

2.12 There may be instances where an employee's unsatisfactory performance can be so serious, or that there are too many issues to be dealt with informally, that the formal procedure should commence straight away (Section 5 and 10). Employees will be advised accordingly in writing.

2.13 If an employee resigns immediately prior to or during a capability hearing, this will not prevent the concerns about serious professional incompetence being considered. It is important that every effort is made to reach a conclusion in all cases of alleged serious professional incompetence and reaching a judgement as to whether the concerns would have been substantiated, on the basis of all of the information available. The process would continue even if the employee does not co-operate, raises a grievance or leaves the Authority's employment. The employer or agent must refer the case in line with the Education (Wales) (Act) 2014, as amended and the Education Workforce Council (Main Functions) (Wales) Regulations 2015, as amended, where:

- It ceased to use the services of a registered person in Wales had he or she not stopped providing them (an employer).
- It terminated arrangements with a registered person, or might have terminated arrangements with a registered person had he or she not terminated them or similar.

2.14 Concerns of poor performance will be addressed in a supportive manner, with every opportunity to improve within the current role being offered, and where such improvement is not achievable and/or sustainable, consideration will be given to exploring suitable alternative employment opportunities through redeployment when applicable/possible. Termination of employment on grounds of capability will only ever be a last resort.

2.15 The agreed monitoring periods of 20-30 school days for part time employees will equate to 20-30 school days of their contracted working days.

3.0 Roles and Responsibilities

3.1 The Governing Body is responsible for:

- Adoption of a policy and procedure.
- Any arrangements associated with the coordination and governance of Governor Committees and taking decisions on dismissing employees on capability grounds and appeals against such decisions.
- Professional Development support and arrangements for the Headteacher, with support from the Local Authority.
- Monitoring the application of the Policy.

3.2 The Headteacher/designated managers (or Chair of Governors in the case of the Headteacher) are responsible for:

- The management of the process and whilst the headteacher may nominate another senior employee to undertake this process, the headteacher holds the ultimate responsibility for the management of the process.
- To be fully familiar with the relevant policies relating to Professional Development Review.
- Ensuring new employees have met any staff qualification requirement which are applicable to the role.
- To be fully aware of the expected standards appropriate to the role e.g. the Practising Teacher Standards/ EWC Code of Professional conduct and practice.
- To ensure standards of fairness, objectivity, dignity, respect and consistency of treatment of employees in all cases.
- To initiate the formal investigation of the issue and take appropriate action at any stage of the management of unsatisfactory performance.
- To appoint, where appropriate, a designated member of staff to investigate the issues and/or provide appropriate support.
- Managing and monitoring performance routinely.
- Supporting employees and providing the framework in which they can perform to their best ability.
- Creating a culture where employees know they will be supported.
- Recognising early signs when an employee may be struggling and provide appropriate interventions to enable them to perform their duties and offering support in a fair, reasonable and sensitive manner.
- Invoking the formal capability procedure based on clear evidence and having demonstrated that informal support has been exhausted.
- Clearly communicating underperformance concerns during the Professional Development Review, during management supervisions and as per the procedure outlined in this policy.
- Liaising with a HR representative for advice and guidance, if the formal stages are invoked.

3.3 The employee is responsible for:

- Ensuring, to the best of their ability, that they meet the standards of performance required under their contract of employment, relevant policies, procedures and targets.
- Engagement with the school through any informal process or in the event of the formal procedure being invoked.
- Attend meetings and hearings arranged in accordance with this policy and procedure.
- Drawing to the attention of their line manager any external factors that may be impacting adversely on their performance.

3.4 The HR representative is responsible for:

- Providing advice and guidance on meetings, appeals and standard documentation.
- Advise on the procedure to ensure compliance with the law, fairness and consistency.
- Attend formal meetings and appeals meetings in an advisory capacity.

4.0 Before Commencing the Formal Capability Process

Initial Identification of where an employee is not achieving the required levels of performance, often arises through normal professional development reviews, one-to-ones, supervisions and appraisals.

Where an employee is not achieving the required levels of performance, this should be discussed with the employee by their immediate line manager during the professional development or supervision meetings.

The line manager should seek to identify the nature and causes of the perceived problems. Some difficulties may be temporary because of family/personal circumstances or short-term health problems. The manager should consider whether the issues are a matter of lack of capability, or of ill-health or misconduct which should be dealt with through separate procedures.

It is expected the majority of performance related issues will be resolved promptly at this point, except where there is evidence that such an approach has proved in-effective already. Where support has already been provided as part of the appraisal or management process and concerns remain, the manager may refer the matter to the Headteacher. Before commencing the formal capability procedure, the manager should ensure they are satisfied that appropriate support has been provided to the employee to assist them in improving their performance and that the employee is completely aware of what stage they are in the process. The instigation of the capability procedure should not come as a surprise to the employee concerned.

Any relevant information from appraisal statements or supervisions may be taken into account as evidence.

Where a decision is taken to commence the formal capability procedure, then the capability procedure supersedes professional development or supervision

arrangements. The professional development process may be suspended at any time during the professional development cycle where such a decision is made.

Where this is the case the Headteacher will invite the employee to attend a Capability meeting.

5.0 Capability Procedure – Formal Stage

5.1 First Formal Stage

The employee will be invited to the Stage 1 Capability Meeting, giving at least 5 school days' notice in writing. They will be informed of their right to be accompanied by a work based colleague or Trade Union Representative. Any information or evidence to be considered at the meeting, such as notes of any previous meetings/discussions/relevant documentation will be shared with the employee at least 2 days before the meeting. The meeting will be convened to discuss the performance concerns that have been identified.
Capability Meeting
Preparation before the meeting Headteacher/Manager invites employee to the meeting to discuss the performance concerns that have been identified. Headteacher/Manager should collate in advance of the meeting any necessary information/evidence, where appropriate, to demonstrate to the employee where they are not meeting the required standards

of performance, e.g. quality of teaching, supervision notes, appraisals, quality of administration tasks, behaviour management or leadership skills in the case of a TLR holder or on the Leadership spine.
See Appendix 1 – A Checklist for the Meeting

During the meeting

The discussion should include the following:

- Headteacher/Manager will present the evidence of the performance issue(s) to the employee and express their concerns.
- The employee is made aware that this is the first stage and that the approach to be taken is one of constructive support, guidance, coaching and encouragement.
- Employee will be given full opportunity to respond to the concerns and explain any factors that may be affecting their performance. If any underlying medical conditions are suggested, it may be appropriate to consider reasonable adjustments and/or refer the employee to Occupational Health for advice.
- The Manager will give full consideration to all the responses made by the employee before reaching a decision about the next steps and confirming the outcome.

Possible outcomes of the meeting

1) To continue to monitor performance under the normal professional development or supervision arrangements.
2) Identify what the issue is related to another factor other than capability and refer to the appropriate procedure e.g. disciplinary/attendance management.
3) Take further action under the Capability Policy
    - Headteacher/Manager should confirm to the employee that their work performance will continue to be monitored under the first stage of the Capability policy.
    - Headteacher/Manager should develop a Performance Improvement Plan (PIP) with the employee, with specific targets and dates. Every effort should be made where possible to agree the details of the plan. ***See Appendix 2 – Performance Improvement Plan***
    - Actions for support, development and reasonable adjustments and how the Headteacher/Manager will assist the employee to meet the required levels of improvement should be included within the Performance Improvement Plan (PIP). See Appendix 5.
    - Headteacher/Manager to establish the time period within which the specified improvements will be monitored and provide regular feedback on progress. The time period will generally be **20 - 30** school days. However, each case should be considered on its own merits and as such it maybe that a shorter or longer monitoring period is required. Advice regarding this can be provided from your HR Representative. Every effort should be made where possible to agree the time period that improvements will be monitored.
    - Agree and advise employee of the frequency of review meetings to monitor progress.

Follow up Actions

The outcome of the capability meeting will be confirmed in writing to the employee, including details of the Performance Improvement Plan and the date(s) for the first review meetings and last review meeting at the end of the monitoring period.

The importance of meetings and observations are critical in terms of bringing about the required improvement in an employee's performance. The record of any meetings and the agreed performance improvement plan will be recorded on file.

Review meetings should take place during the agreed monitoring period to monitor progress and both the headteacher/manager and the employee should provide input to this. Any targets that also need amending should also be made on the Performance Improvement Plan. Furthermore, regular feedback should also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc) but a written record should be kept.

Stage 1 Capability Outcome Meeting

Before the meeting

The employee will be invited to a **Stage 1 Capability Outcome Meeting** to review progress against the Performance Improvement plan, giving at least 5 School days' notice in writing. The notice timescale can be extended by mutual agreement between the school and the employee/Trade Union representative. They will be informed of their right to be accompanied by a work based colleague or Trade Union representative. Any information or evidence to be considered at the meeting, such as a copy of the PIP, notes of any previous meetings/discussions/documentation will be shared with the employee at least 2 school days before the meeting.

The Headteacher/Manager will conduct the meeting and a Human Resources (HR) representative will also be present. The role of HR is to ensure that any action taken is procedurally fair and appropriate, given all the circumstances, and that it is consistent with action taken elsewhere within the Local Authority. The HR Representative will be there in an advisory capacity only.

Any documentation the employee wishes to submit should be provided no later than 2 school days before the meeting.

During the meeting

The Headteacher/Manager will undertake the Stage 1 Capability Outcome meeting to:

- Review whether the employee's performance has improved.
- Consider whether the employee has been provided with the necessary support and assistance to improve their performance including any OH advice received.
- Identify if there is any further action which needs to be taken to support the employee in improving their performance and/or whether they should be given more time to improve.
- Provide the employee with the opportunity to respond, comment and make suggestions.
- Consider whether the employee should be issued with formal warning that their performance continues to be unsatisfactory and that their future employment is at risk.

Possible outcomes of the meeting

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing. However, if performance was to dip again during a three month period, the employee will revert back to this point in the procedure.
- Significant improvement has been made but the stage 1 review period may be extended to allow the employee additional time to meet all the targets set.
- Unsatisfactory improvement to performance, in which case the employee will be advised that a **FIRST WRITTEN WARNING** is now being issued for a period of 6 months and they will move to the second formal stage of the procedure. The employee has the right to appeal against the First Written Warning and any appeal should be dealt with in a timely manner. The employee should be advised that if performance does not improve by the next review meeting, a final written warning may be issued. The Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider whether additional support may be provided to assist the employee to achieve the required standards of performance. A stage 2 performance improvement plan will be documented and agreed with the employee with a new **20 (minimum) - 30** school days monitoring period. The employee will then commence the second formal review period.
- The outcome of the meeting will be confirmed in writing to the employee within 5 school days.

5.2 Second Formal Stage

During the Second formal review period (under which a first written warning is current), frequent review meetings should take place during the agreed monitoring period **(usually 20-30 school days)** to monitor progress, to which both the employee and the manager should provide input into this. Furthermore regular feedback should also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervision etc) but a written record should be kept.

At the end of the second formal review period, a meeting will be convened with the Headteacher/manager and the employee, to review progress against the Performance Improvement Plan.

Stage 2 Capability Outcome Meeting
Before the meeting The employee will be invited to a **Stage 2 Capability Outcome Meeting** to review progress against the Performance Improvement plan, giving at least 5 School days' notice in writing. This notice period can be extended by mutual agreement between the school and the employee/Trade Union representative. They will be informed of their right to be accompanied by a work based colleague or Trade Union representative. Any information or evidence to be considered at the meeting, such as a copy of the PIP, notes of any previous meetings/discussions/documentation will be shared with the employee at least 2 school days before the meeting. The Headteacher/Manager will conduct the meeting and a HR representative will also be present. The role of HR is to ensure that any action taken is procedurally fair and appropriate, given all the circumstances, and that it is consistent with action taken elsewhere within the Local Authority. The HR Representative will be there in an advisory capacity only. Any documentation the employee wishes to submit should be provided no later than 2 school days before the meeting.
During the meeting The Headteacher/Manager will undertake the Stage 2 Capability Outcome meeting to: • Review whether the employee's performance has improved. • Consider whether the employee has been provided with the necessary support and assistance to improve their performance. • Identify if there is any further action which needs to be taken to support the employee in improving their performance and/or whether they should be given more time to improve. • Provide the employee with the opportunity to respond, comment and make suggestions. • Consider whether the employee should be issued with formal warning that their performance continues to be unsatisfactory and that their future employment is at risk.
Possible outcomes of the meeting • Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing. However, if performance was to dip again during the period that the written warning is live, the employee will revert back to this stage of the procedure. • Significant improvement has been made but the second review period may be extended to allow the employee additional time to meet all the targets set. • Unsatisfactory improvement to performance, in which case the employee will be advised that a **FINAL WRITTEN WARNING** is now being issued for 12 months. The employee has the right to appeal against the Final Written Warning and any appeal should be dealt with a timely manner. The employee should be advised that if performance does not improve by the next review meeting, a capability hearing may be scheduled that could result in the

employees dismissal. The Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider whether additional support may be provided to assist the employee to achieve the required standards of performance. A stage 3 performance improvement plan will be documented and agreed with the employee with a new **20 (**minimum) **- 30** school days monitoring period set. The employee will then commence the third formal review period.

The outcome of the meeting will be confirmed in writing to the employee within 5 school days.

5.3 Third Formal Stage

During the third formal review period, frequent review meetings should take place during the agreed monitoring period (usually 20-30 school days) to monitor progress, to which both the employee and the manager should provide input into. Furthermore regular feedback should also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervision etc), but a written record should be kept by the Head Teacher / Manager.

At the end of the third formal review period, a meeting will be convened with the Headteacher/manager and the employee, to review progress against the Performance Improvement Plan.

Stage 3 Capability Outcome Meeting

Before the meeting

The employee will be invited to a **Stage 3 Capability Outcome Meeting** to review progress against the Performance Improvement plan, giving at least 5 School days' notice in writing. This can be extended by mutual agreement between the school and the employee/Trade Union representative. They will be informed of their right to be accompanied by a work based colleague or Trade Union representative. Any information or evidence to be considered at the meeting, such as a copy of the PIP, notes of any previous meetings/discussions/documentation will be shared with the employee at least 2 school days before the meeting.

The Headteacher/Manager will conduct the meeting and a HR representative will also be present. The role of HR is to ensure that any action taken is procedurally fair and appropriate, given all the circumstances, and that it is consistent with action taken elsewhere within the Local Authority. The HR Representative will be there in an advisory capacity only.

Any documentation the employee wishes to submit should be provided no later than 2 school days before the meeting.

During the meeting

The Headteacher/Manager will undertake the Stage 3 Capability outcome meeting to:

- Review whether the employee's performance has improved.
- Consider whether the employee has been provided with the necessary support and assistance to improve their performance.
- Identify if there is any further action which needs to be taken to support the employee in improving their performance and/or whether they should be given more time to improve.
- Provide the employee with the opportunity to respond, comment and make suggestions.

Possible outcomes of the meeting

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing. However, if performance was to dip again during the period that the final written warning is live, the employee will revert back to this stage of the procedure.

- Significant improvement has been made but the third review period may be extended to allow the employee additional time to meet all the targets set.
- Unsatisfactory improvement to performance, in which case the employee will be advised that as a final written warning has already been issued, a formal capability hearing will be convened with the Staff Discipline and Dismissal Committee. The purpose of the capability hearing is for the Governing body to determine, based on the evidence that:
  - The employee has had an appropriate level of support, and evidence indicates a serious lack of capability in which case dismissal should be considered on the grounds of capability, or action short of dismissal, e.g., redeployment.
  - Support has been insufficient, or other mitigating circumstances have come to light, and a further period of support and monitoring should be allowed which may improve the employee's performance.

The outcome of the meeting will be confirmed in writing to the employee within 5 school days.

Third Formal Stage – Final Capability Hearing

Before the Hearing

As the outcome of this meeting could be dismissal, the Chair of the Staff Discipline and Dismissal committee will conduct/chair this meeting and they will be supported by HR Representative. The Headteacher/Manager will present the case and arrange the Hearing. The employee must be advised in writing of the date of the capability hearing and provided with at least 5 school days' notice to attend. The letter should include the following information:

- The date, time and location of the hearing.
- A clear statement of the concern about the employee's continued failure to meet the required standards of performance.
- Supporting evidence of the concerns, including, records of monitoring/progress to date, all the correspondence from the Informal and formal stages, the performance improvement plan and notes from subsequent meetings, including any witnesses who may be asked to attend.
- They are required to submit to the panel in advance of the hearing any information they intend to rely on, including any names of witnesses they intend to call at least 3 school days before the hearing.
- Those in attendance and who will be the chair.
- The employee's right to be accompanied by a Work based Colleague, or Trade Union Representative.
- That a decision may be taken to dismiss on the grounds of Capability.

Any paperwork the employee wishes to submit to be considered as part of the hearing should be submitted at least 2 school days before the date the of the hearing.

If the employee wishes to attend the hearing but is absent due to sickness or some other reason or their representative is unable to attend, the hearing may be postponed and will be rearranged within 5 school days, or as soon as is practicable. The employee should be notified of the revised date in writing and informed that if they are not able to attend on the revised date the hearing will proceed in their absence. If the employee cannot personally attend, they will be invited to put their case forward via their representative or if that person is not available, submit their case in writing but no later than 2 school days in advance of the hearing.

Employees should be made aware that it is their responsibility to facilitate and communicate with their Trade Union representative and that the process will not be unduly delayed due to the representative of their choice not being available.

During the Hearing

The procedure to follow for a formal capability hearing is set out in Appendix 4.

The management position will be presented to the Chair. They will be required to demonstrate what action, support, training and discussions have taken place with the employee throughout the Informal Stage and Formal Stage of the procedure.
The HR representative's role will be to contribute specialist knowledge of procedural issues, relevant policies and employment law matters. The HR Advisor will be present at the hearing to act in an advisory capacity and will remain in attendance throughout.

The employee (and/or their representative) will be given the opportunity to respond and provide an explanation as to why they have not met the required standards of performance.

The Staff Discipline and Dismissal committee will make the final decision on the outcome. A written record must be kept in accordance with the School governance regulations.

Possible outcomes of the Hearing

- Extend the review period (stage 3) or vary any special arrangements made to support/train or coach the employee.
- Consider redeployment as an alternative to dismissal on grounds of capability. This would not involve salary protection if the alternative job is paid at a lower rate.
- Dismissal with contractual notice on the basis that no improvement in performance is foreseeable.

If an employee is dismissed, they should be advised that there is a duty to make a referral to the Education Workforce Council. The Governors will write to the Designated Authority Officer confirming the dismissal.

The outcome of the Final Capability Hearing should be confirmed to the employee in writing by the Chair of the Staff Disciplinary and Dismissal Committee within 5 school days of the date of the hearing.

Where an employee has been dismissed on the grounds of capability, they should be informed of their right of appeal.

The HR service will make the arrangements to action the dismissal as per protocol.

6.0 Appeals

If an employee wishes to appeal a decision made at a Capability Hearing/meeting, they must do so in writing to the Staff Discipline and Dismissal Appeals committee within 5 school days of the receipt of the outcome letter. The main grounds for appealing are:

- That an inconsistent/inappropriate or harsh sanction has been given;
- That the process applied was in some way unfair or inconsistent with this policy;
- That new evidence has come to light that was not considered as part of the original process.

The letter should make it clear on what grounds the employee is appealing.

The Appeal Hearing would normally be held within 10 school days or as soon as practically possible. This can be extended by mutual agreement between the school and employee/Trade Union Representative.

No redeployment or dismissal will take effect until after the appeal is concluded.

6.1 The Appeal Hearing

At the Appeal Hearing, the employee will be given the opportunity to state the grounds on which the appeal is made. Employees have the right to be accompanied to the hearing by a work based colleague or trade union representative.

Note that an appeal hearing is not intended to repeat the capability hearing in full, but will focus on the specific factors detailed in the appeal.

The Appeal Hearing outcome will be one of the following:

- Confirm original decision.
- Appeal is upheld resulting in the substitution of the original decision with a different outcome e.g. further review period/warning, reduced duration of the warning, performance is satisfactory.

In the case of an appeal panel overturning a decision to dismiss, the record will be amended with effect from the original date of the dismissal decision.

The decision will be confirmed in writing to the employee normally within five school days of the meeting.

The Appeal decision shall be final as far as the School is concerned.

In the case of a final stage 3 capability hearing appeal resulting in a decision to dismiss, the panel will inform the relevant Authority Officers of the outcome.

7.0 Capability action against Trade Union Representatives

Normal performance standards apply to Trade Union Representatives in their roles.

No formal procedures will be taken against a recognised Trade Union official until the Regional Trade Union official has been notified/discussed with.

A recognised Trade Union official is defined as:

- The secretary, Branch Officer or Chair of a Trade Union recognised by the Council;
- A School based representative/steward of that Union.

8.0 Responsibility to refer

The school is responsible for referring cases of alleged unacceptable professional conduct, serious professional conduct, serious professional incompetence and conviction of a relevant offence to the Education Workforce Council (EWC). The school must refer a case in line with the *Education (Wales) (Act) 2014*, as amended, and *The Education Workforce Council (Main Functions) (Wales) Regulations 2015,* as amended.

If an employee is dismissed as part of this procedure, the case will be reported in accordance with these regulations. If the procedure is not concluded during the formal stage because the employee

resigns, the Governing Body committee must still reach a view on whether dismissal would have been the outcome on the basis of evidence availablebefore referring a case.

The school must notify the Designated Authority Officer who will then prepare (with the assistance of the school) the notification to the EWC. In the case of voluntary aided, foundation or foundation special schools, the notification to the EWC must be made by the Governing Body.

9.0 Capability of the Headteacher

In the event that the issues involve the performance of the Headteacher, the procedure will remain the same, however, responsibility for considering and where necessary applying the capability procedure rests with the school governing body. The Chair of the Governing body must seek the involvement of the Designated Statutory Education and HR Officers. Headteachers subject to formal capability procedures will continue to be responsible for the professional development and supervision of the school.

Whilst the procedure is the same, it will be the responsibility of the Chair of Governors to initiate the Capability procedure and take appropriate action at any stage in the management of the Headteacher's capability. The Chair of Governors also ensures a programme of support is put in place for the headteacher.

10.0 Alternative Process in Serious Cases

The alternative process will used in extreme cases, where the requirements of the service do not permit any delay, including where pupils' education is jeopardised, or where performance has seriously deteriorated.

In a particularly serious case, for example where an employee's classroom control is so poor that order cannot be established, or where there are serious implications on the ability of the school to maintain the effective learning environment for pupils, or there are serious concerns in a support role, it will be appropriate to move directly to issue a **Final Written Warning**.

In this scenario, there may be circumstances where the Headteacher will consider suspending an employee if they felt it necessary for the protection of children, staff or property or where the continued presence of the employee in the school could have a detrimental effect on the running of the school. A suspension Risk Assessment should always be undertaken when considering a suspension.

The Head teacher must arrange a formal interview providing at least **five** working days' notice and allowing the right to be accompanied by a colleague or Trade Union representative.

At the meeting the employee must be advised of all the areas of concern and given the opportunity to put forward any explanations for performance issues. In the event of unsatisfactory explanation, the Head teacher will confirm that the next step needs to be a 20-30 schools day's assessment procedure. The employee should be advised that failure to improve may lead to dismissal and this should be outlined in writing to the employee. This has the status of a **Final Written Warning,** as per the formal procedure.

Day 1 -20+ – Regular monitoring and evaluation of performance, with support and guidance including training, if necessary, for the employee.

Days 21+ – Final evaluation meeting to report the assessment of performance over the previous weeks.

If performance has been satisfactory the capability procedure can cease at this point and this will be confirmed in writing by the Head teacher. This will be recorded as a final warning which will remain on file for 12 months. The employee has the right to appeal against the final written warning.

If performance remains unsatisfactory in this 4 to 6 working week period, or subsequently falls below standards in the period of warning, the Head teacher may (in line with 3rd formal stage review meeting) either;

- implement a further assessment period, or
- refer the matter to the staff disciplinary/dismissal committee.

If referred during a warning period, the decision will be based on the length of time that has elapsed during the warning period and the extent of the performance issues. The letter to the employee should make this clear.

In the case of Headteacher capability, this process would be instigated/commenced by the Chair of Governors with support and guidance from Local Authority Officers.

11.0 Disputes in the procedure

Any disagreements about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling a particular case.

In the event of a grievance being submitted during the course of this procedure, this procedure would only be delayed in cases where there is strong evidence, or indication that the employee has been mistreated, or where there are reasonable grounds to doubt the ability of any person(s) making decisions or applying sanctions to act impartially. In this scenario, consideration should be given to bringing in another Headteacher or Senior Leadership Team member or Governor to deal with the capability issue. Where possible, the capability procedure would continue uninterrupted and any grievance heard separately, with no procedure taking precedence over another.

12.0 Records

Where a matter is heard at a capability hearing, records will be kept detailing the nature of the allegations, the schools response and the outcome. Details of these will be kept on file by the HR department, who will ensure any records are held in accordance with the Data Protection Act and Employment legislation.

13.0 Monitoring and Review

The policy will be reviewed to ensure compliance with changes in employment legislation or recommended best practice.

The policy will be monitored in line with the Public Sector Equality Duty for Wales.

Appendix 1 - A Checklist for the Capability Meeting

Key points	✓
Gather all of the facts before organising an informal meeting with the employee.	
Invite the employee to a meeting, explaining your reasons. Give at least 5 school days' notice in writing and inform them of their right to be accompanied by a work based colleague or Trade Union Representative. The meeting should be conducted in an area away from the main place of work, particularly if this is public. Book a room or a meeting space. Allow sufficient time for the meeting.	
Prepare for the meeting, ensuring you have specific examples. These can then be worked into the Performance Improvement Plan (Appendix 2). Any information or evidence to be considered at the meeting should be shared with the employee at least 2 days before the meeting.	
At that meeting you need to: • Highlight the poor performance to the employee, giving specific examples of where they do not appear to be meeting the required standard. • Balance this with examples of where they are doing well and meeting the required standards. This helps them to see that you value them and recognises their strengths. • Establish the reasons for the underperformance: ➢ unreasonable expectations on the part of the manager ➢ lack of proper explanation and lack of clarity over the standards required ➢ negligence, carelessness, idleness, inattentiveness on the part of the employee (conduct issue) ➢ lack of ability, skills or experience (capability issue). • Give the employee an opportunity to state their case, explaining their reasons for the underperformance. • Identify and agree ways of solving the underperformance – e.g. coaching, providing relevant training, mentoring, closer supervision. If capability is the issue, then – if alternative work is available – this should also be considered and discussed with the employee. You should also consider any alternative posts the employee may suggest. • Explicitly state the required level or standards of performance and agree SMART (that is, specific, measurable, agreed, realistic and time-bound) objectives. • Set a review date and follow-up meeting. • Confirm the agreed outcomes of the meeting in writing.	

You should monitor performance carefully and provide feedback on an ongoing basis.	
Key points	✓
At the agreed follow-up meetings, you should: • Provide feedback on the things that have gone well and those that could have been improved upon and why or how. • Discuss how the employee feels and confirm whether or not there is anything else that you could do to help. • Agree further objectives, meetings and a further review date. • Document your agreement in writing.	

Appendix 2 – Performance Improvement Plan

See Separate Document

Appendix 3 - Formal procedure for Capability Hearing

Present:

- The Panel of Governors
- The Headteacher/other designated person presenting the case against the employee.
- The employee
- The employee's representative
- (If appropriate) Witnesses – these may only be present to provide their evidence, then will leave the hearing
- A HR Adviser will be present at the hearing to act in an advisory capacity and will remain in attendance throughout the process
- A designated note taker

A written record must be kept in accordance with the school governance regulations.

The employee or their representative may also arrange to take notes during the hearing.

Format

The Head teacher/ other designated person shall present details of the case against the employee and may call witnesses and/or produce documentary evidence relevant to the hearing.

The employee and /or their representative shall be given the opportunity to respond and may also call witnesses and/or produce documents relevant to the hearing.

Note: in both cases – all relevant papers to be shared, should have been provided in advance of the hearing by both parties including information on witnesses to be called.

The Panel members may then ask questions (via the Chair) of either party to the hearing throughout the proceedings in order to seek clarity and to fully understand what measures have been taken to resolve the performance issues.

The Head teacher and the employee (and/or their representative) may also ask questions of each other.

When all the evidence has been heard, then both parties to the hearing will withdraw.

The Panel will then, with advice from the Local Authority officer, consider all the evidence submitted.

This must include the level of support provided to the employee, the evidence of their performance, and the procedure that has been followed.

The parties may be recalled if it is necessary to seek further points for clarification. In such cases, both parties must return even if clarity is sought from one party.

Once the panel has arrived at their decision, they will call both parties back in and verbally confirm the outcome and advise of the right of appeal.

In exceptional circumstances, it may be that the panel determine that they will adjourn and agree a time on the following day to advise of the outcome, or in discussion with the employee/their representative agree that the outcome will be provided in writing.

The outcome of the Capability Hearing will also be confirmed in writing. In the case of dismissal, the Council will write to the employee within five working days of receiving written notification from the Governors, to confirm dismissal and the final date of employment.

Appendix 4 – Timescales and Duration of Warnings

Stage	Action	Resulting Sanction	Review Timescale	Duration of Warning
Stage 1	First Formal Stage (Headteacher/Nominated Manager)	Written Warning	20-30 School Days	6 months
Stage 2	Second Formal Stage (Headteacher/Nominated Manager)	Final Written Warning	20-30 School Days	12 months
Stage 3	Third Formal Stage (Governing Body Panel)	Dismissal or Action short of Dismissal	20-30 School Days	

Appendix 5 – Suggested/example support measures

There are many potential solutions to issues of capability, many of which will need to be tailored to an individual circumstances, however some examples are detailed below:

Provision of Learning and Development Opportunities

The provision of learning and development opportunities to assist an employee to improve their performance should be considered. The decision as to what constitutes appropriate learning and development and its delivery should be discussed and agreed with employees in each case. This could include both informal and formal types of development interventions, not to be limited to only formal external courses.

Coaching

Coaching is the process by which one person helps another to improve a particular aspect of their performance. There are numerous models but they follow a simple, four stage approach:

- Identify the current performance level for a particular task;
- discuss and agree the goal or objective for that task – the coach may show the employee what 'good performance' looks like;
- give the employee time to practice, with direct feedback on how they are doing; and
- review progress, giving feedback on successes and agreeing what steps the employee will take to reinforce the learning when on their own.

One to One Meetings

One to one meetings take place regularly and face to face. One to ones are a 'conversation' focusing on key areas that will make a difference to the individual's performance. These meetings should be

uninterrupted, structured, planned and recorded. The key element of a one to one meeting is that it is open. It is an opportunity to give and receive feedback, review objectives, cover issues and problems and discuss training and development needs and plans.

Referral to occupational health

Occupational Health will, in many instances, have a key role in assessing and addressing certain aspects of capability when they are found to be related to health conditions and they can advise managers on the types of reasonable adjustments that may help to support an employee with a disability to achieve the work standards required.

Access to Counselling Services

Some employees may benefit from access to counselling services. Managers should discuss with Occupational Health/Employee Assistance Programme Providers if this is appropriate and how it can be accessed.

Appendix 6 – Managers Checklist

In discussing and agreeing any Performance Improvement Plans to address matters related to Employee Capability the line manager needs to consider the following:

- How have the concerns come to light?
- What evidence is there that this is a Capability issue and not something else?
- What impact does this concern have and how serious is it?
- Have you explored the person's insight and understanding of the Capability Issue?
- In what ways have you supported the employee?
- Have you explored sufficiently the need for guidance / training?
- What opportunities have you given for the employee to improve?
- Are there any other contributing factors to be considered?
- What steps have you taken to ascertain the medical position?
- Is there a need for "reasonable adjustments" to be considered?