



# PLYMSTOCK SCHOOL

## Capability Policy

Governors' Committee: Personnel

Lead Officer: Headteacher

Date for Review: Summer Term 2018

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### 1. INTRODUCTION

Plymouth School is committed to providing high quality teaching and learning. Through our workforce the aim is to provide opportunities for all our pupils, whatever their ability. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.

- 1.1 Having an effective appraisal process in place is one of the ways to support our employees and deal with performance matters as they arise; this is set out in our Appraisal Policy.
- 1.2 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of

them and significant concerns have been raised which the Appraisal Policy has been unable to address. However, there may be rare occasions where concerns come to light that are so serious that they are deemed to be beyond the appraisal process and the employee may move immediately to the informal capability stage.

1.3 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

1.4 This policy does not form part of any employee's contract of employment and may be amended at any time.

## **2. SCOPE AND PURPOSE OF THIS POLICY**

2.1 The purpose of this policy is to provide a framework within which Plymstock School can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.

2.2 This policy will be applied when either informal support as set out in the Appraisal Policy has been provided and the required improvement has not been made, or in rare occasions, where concerns come to light that are so serious that they are deemed to be beyond the appraisal process and the employee may move immediately to the informal capability stage.

2.3 This policy applies to all employees of the School, including teachers and support staff, excluding those who are in the probationary period. It does not apply to agency workers.

## **3. INFORMAL CAPABILITY**

3.1 If an employee is failing to meet the required standards, it is the manager's responsibility to discuss this with the employee at the earliest opportunity.

3.2 The employee will be entitled to be accompanied at such discussions by either a trade union representative or a work colleague.

3.3 Initial discussion between the manager and the employee should be friendly and constructive. Discussions should take place with the specific aim of identifying ways in which the employee can be encouraged and helped to improve performance. Discussions should provide an opportunity for:

- a) The manager to clearly identify and illustrate the perceived areas of concern
- b) The employee to respond in an informal way
- c) To discuss any difficulties which may be preventing satisfactory performance
- d) To discuss and agree the level of support which will be provided during the review period which may include:

- Appointment of a mentor to provide guidance and support
  - Provision of additional resources
  - Modified workload or timetable for a specific period
  - Additional training, including participation in the Teacher Support Programme
  - Temporary suspension of additional responsibilities without loss of remuneration
  - Observations of good practice amongst colleagues
- e) To agree a reasonable timescale for the informal monitoring and review period, this will not be less than 20 working days and not more than 50 working days.

3.4 The outcome of the discussion will be confirmed in writing to the employee with confirmation of:

- a) The specific issues that need to be addressed in order to achieve improvement in performance
- b) Details of any support that will be given to the employee
- c) The timescale over which the improvement in performance is to be achieved without having to enter into formal procedures
- d) Any particular points the employee wishes to have recorded at that stage.

At the end of the review period the manager will arrange to meet with the employee and review their performance during the review period. There will be three possible outcomes from the review meeting:

- a) Satisfactory progress has been made and no further action is required
- b) Some progress has been made, a further review period will be set
- c) There has been no marked improvement and the school's formal capability procedure will be invoked.

## **4 NOTIFICATION AND PROCEDURE FOR FORMAL MEETINGS**

4.1 An employee will be given at least ten working days' written notice if required to attend any formal meeting under this procedure.

4.2 The written notification will also contain:

- (a) Sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to answer the case
- (b) Copies of any written evidence
- (c) Copies of witness statements and details of witnesses attending (if appropriate)
- (d) Details of the time and place of the meeting

- (e) The right to be accompanied (see 4.4)
- 4.3 Formal meetings will be conducted by the Headteacher or other senior employee delegated this responsibility by the Headteacher.
- 4.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a work colleague or a trade union representative.
- 4.5 Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.
- 4.6 A formal meeting under this procedure will:
  - 4.6.1 identify performance shortcomings;
  - 4.6.2 allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
  - 4.6.3 identify what action (including support provided) has been taken to date and what the outcome was;
  - 4.6.4 where appropriate, identify and explain any support that will be available to help the employee improve performance;
  - 4.6.5 where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal; and
  - 4.6.6 confirm the timescales for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 4.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 4.8 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 4.9 Following a formal meeting, the matters covered in 4.6 and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning.
- 4.10 Minutes will be taken of all formal meetings and you will be sent a copy following the meeting.

## **5 FORMAL CAPABILITY MEETING (STAGE 1)**

- 5.1 If it is considered that there are serious performance concerns which have not been successfully resolved at the informal stage the member of staff will be invited to a formal capability meeting to establish the facts.
- 5.2 The employee and their companion will have the opportunity to put their case and the Headteacher/senior manager will have the opportunity to put questions.
- 5.3 There will be three possible outcomes from the meeting:
- a) Satisfactory progress has been made and no further action is required.
  - b) Some progress has been made; a further review period will be set.
  - c) Insufficient or no progress has been made.
- 5.4 The following actions will be considered:
- a) The member of staff leaves the Capability Process.
  - b) The issuing of a formal written warning
  - c) The issuing of a final written warning (applicable only in extreme cases)
- 5.5 Where a warning is issued, this will usually be a formal written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this could be a final written warning.
- 5.6 The employee will have the right of appeal if a warning is issued.

### **Monitoring & Review Period (1):**

- 5.7 The standard set length of the monitoring and review period following the formal capability meeting in this School is normally 30 working days. However, in some cases it may be appropriate for a shorter period of 20 working days to be set. In exceptional circumstances, this period can be extended up to a maximum of 50 working days.
- 5.8 At the end of the monitoring and review period the member of staff will be invited to a formal review meeting, unless they were issued with a final written warning in which case they will be invited to a decision meeting.

## **6 FORMAL REVIEW MEETING (STAGE 2)**

- 6.1 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 20 additional working days.

- 6.2 If no, or insufficient improvement has been made during the monitoring and review period, they will receive a final written warning.
- 6.3 The employee will have the right of appeal if a warning is issued.

#### Monitoring & Review Period (2):

- 6.4 At the end of the further monitoring and review period, the member of staff will be invited to a decision meeting.
- 6.5 At this stage and by agreement with the member of staff, instead of progressing to a decision meeting it may be appropriate to consider whether there is a vacant post and if so whether this may be more suited to their capabilities. If there is a vacant post which is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

### **7 DECISION MEETING (STAGE 3)**

- 7.1 The decision meeting will usually be conducted by the Headteacher if they have not previously been involved or a panel of governors not previously involved in the case, which could include the Headteacher. Dismissal is a possible outcome of a decision meeting.
- 7.2 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.
- 7.3 If performance remains unsatisfactory, a decision will be made that you should be dismissed or required to cease working at the School. Normal delegation rules apply to the power of dismissal.
- 7.4 The member of staff will be informed in writing as soon as possible of the dismissal, the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the right of appeal.

### **8 APPEAL**

- 8.1 If the staff member feels that the decision to dismiss them or other action taken against them (including warnings) is wrong or unjust, they may appeal. They should appeal in writing to the Clerk to Governors setting out the grounds for appeal within ten working days of the decision.
- 8.2 Appeals will be heard without unreasonable delay, with 10 working days' notice and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a union representative or work colleague will apply as set out in section 3.

- 8.3 The appeal will be dealt with impartially and, wherever possible, by a panel of three governors who have not previously been involved in the case in line with the Schools arrangements for appeals.
- 8.4 The member of staff will be informed in writing of the results of the appeal hearing as soon as possible and not later than 5 working days after the appeal hearing.
- 8.5 There is no further right of appeal against the sanction or dismissal within the School.

## **9 SICKNESS**

- 9.1 If at any stage long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the School's sickness absence policy.
- 9.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **10 CAPABILITY ON THE GROUNDS OF ILL HEALTH**

Employees may be dismissed on grounds of capability due to ill-health, but in doing so the Governing Body must be able to demonstrate that a full and proper medical investigation has been carried out and that alternative solutions or arrangements, such as redeployment or reasonable adjustments to working methods, have been properly considered. This of course will need to have been documented throughout the process.

- 10.1 Dismissal due to capability on the grounds of ill-health may fall into two categories:
1. persistent short term ill-health which is not of a permanent nature and occurs over an intermittent period of time thus rendering the individual unable to perform satisfactorily the duties of his/her post because he/she are not at work often enough.
  2. long term ill-health whereby the medical condition from which the employee suffers is of a permanent or long term nature, thus rendering him/her incapable of discharging the duties and responsibilities of the post;
- 10.2 Dismissal due to capability on the grounds of ill-health can only be determined at an Ill-Health Capability Hearing as part of the Ill-Health Capability Review Procedure as below.

## **11 ILL HEALTH CAPABILITY REVIEW PROCEDURE**

- 11.1 Once the level of absence has been identified as a problem, the Headteacher should consider taking action as outlined in this capability review procedure.
- 11.2 The Headteacher should decide whether he/she or another senior colleague should conduct the meetings at each stage. If the Headteacher is the subject of concern it is normally the Chair of Governors who would be responsible for such a case.
- 11.3 The first and final health review meetings of this procedure are designed to deal with persistent short-term ill-health cases.
- 11.4 When long-term ill-health, in the opinion of the Occupational Health Physician, makes it impossible for the individual employee to discharge efficiently the duties of the post then consideration of early retirement on grounds of ill-health may be considered. If retirement is not considered an option but there is little likelihood of the person returning to work, it is quite possible to start the procedure at the Ill-Health Capability Hearing stage.

## **12. FIRST HEALTH REVIEW MEETING**

- 12.1 If an employee's sickness absence levels have not improved despite being discussed in their Return to Work Meetings, and the employee has reached the trigger points as listed in the policies for Monitoring and Managing Absence, the Headteacher will invite the employee to a First Health Review Meeting.
- 12.2 The Headteacher will agree a date with the employee and then should confirm the invitation to the First Health Review Meeting in writing giving the employee at least 5 working days notice. They should inform the employee of the time, date and place of the meeting and the reason for the meeting, and state that they may be accompanied by a trade union/professional association representative or work colleague.
- 12.3 In the First Health Review Meeting the Headteacher must:-
  - Explain the concern about the absence level and reasons for that concern, such as operational difficulties caused.
  - Listen to reasons and respond appropriately.
  - Consider whether to refer the case to the Occupational Health Unit, if not already done.
  - State that sustained improvement in attendance is expected and set an appropriate monitoring period and targets for improvement.
  - Identify any support required.
  - Give the employee a formal written warning, if appropriate, and explain that continued failure to improve attendance to the specified



level may lead to a Final Health Review Meeting which could lead to his/her employment being put at risk.

- Fully record the details of the meeting.
- Send a letter to the employee confirming all the details of this meeting.

### **13. FINAL HEALTH REVIEW MEETING**

13.1 If the employee has made no or inadequate improvement by the end of the set Monitoring Period, the Headteacher will ask the employee to attend a Final Health Review Meeting, at which the employee will have the right to be accompanied by a trade union/professional association representative or work colleague and no one else.

13.2 The Headteacher will agree a date with the employee and then should confirm the invitation to the Final Health Review Meeting in writing giving the employee at least 5 working days notice.

13.3 In the Final Health Review Meeting the Headteacher must:-

- Explain the concern about the continued absence level and reasons for that concern, such as operational difficulties caused.
- Listen to reasons and respond appropriately.
- State that sustained improvement in attendance is expected and set an appropriate monitoring period and targets for improvement.
- Identify any support required.
- Give the employee a final written warning, if appropriate, and explain that continued failure to improve attendance to the specified level will lead to an Ill-Health Capability Hearing which could result in dismissal.
- Fully record the details of the meeting.
- Send a letter to the employee confirming all the details of this meeting.

13.4 If the employee has made no or inadequate improvement by the end of the set Monitoring Period, the Headteacher must arrange an Ill-Health Capability Hearing which may lead to dismissal.

If at any stage an employee has reached an acceptable level of improvement, monitoring should revert back to informal arrangements.

### **14. ILL HEALTH CAPABILITY HEARING**

14.1 ARRANGING AN ILL-HEALTH CAPABILITY HEARING

Where possible there will be flexibility with dates when arrangements for a hearing are made, especially where a trade union or professional association representative is expected to attend.

The employee must receive at least ten working days' advance notice in writing, by recorded delivery or delivered by hand, of:

- the purpose of the hearing;
- the complaints or allegations;
- the stage reached in the procedure;
- when and where the hearing will be conducted;
- who will be attending, including witnesses to be called;
- the right to be accompanied by a work colleague or trade union representative;
- the requirement for confidentiality;
- the requirement for the employee to provide, at least 3 working days before the hearing, all documents that he/she intends to present at the hearing. The documents must be presented in hard copy and with sufficient copies for those, except witnesses, who will attend the hearing.

The persons hearing the case have to be impartial. They should not have been involved in any of the preparatory work, should have no detailed knowledge of the allegations prior to receiving the papers for the hearing.

Where a panel of Governors is to hear the case, panel members will be sent all of the papers to be presented not earlier than 2 working days before the hearing. Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

## 14.2 CONDUCTING AN ILL HEALTH CAPABILITY HEARING

The Headteacher will normally conduct the Ill-Health Capability Hearing. Alternatively a panel of 3 Governors will conduct the hearing if the Headteacher is the subject of concern, or in the following circumstances:

- a) Where the Headteacher has been directly involved in earlier Health Review Meeting stages.
- b) Where the Headteacher is subject to suspension; disciplinary procedures (in relation to conduct or capability), including investigation; or disciplinary sanction.
- c) Where the DFE has made formal representations to the Chair of the Governing Body on grounds of serious concerns about the performance of the Headteacher.

### 14.3 PROCEDURE FOR THE ILL HEALTH CAPABILITY HEARING

- a) The Chair of the Panel introduces those present and describes their status, reminds those present of the purpose of the hearing; that adjournment is possible; that a written record of the meeting will be made; and that the proceedings of the hearing are confidential.
- b) Opening statements may be made by both parties, explaining how the case will be demonstrated or defended, referring to the documentation to be presented and indicating the witnesses to be called.
- c) The case for the employer is presented, witnesses being called as necessary. The employee or representative may ask questions of each witness and of the employer at the end of the presentation. The panel members may also question each witness and the presenting officer at the end of the presentation
- d) The response for the employee is presented, witnesses being called as necessary. The employer, and then the panel, may question each witness and the employee at the end of the presentation
- e) When all the evidence has been heard, the Presenting Officer sums up, gathering together the points of the case, not introducing new evidence. It is usual at this point to include a recommendation for a recognised disciplinary penalty and/or future action
- f) The employee or representative sums up
- g) The two sides withdraw to enable the panel to discuss the case
- h) The panel will need to reach a conclusion on:
  - i) whether they find all or some of the concerns proven;
  - ii) what level and type of sanction is appropriate
  - iii) The panel's decision is normally conveyed orally by the Chair of the Panel in the presence of both parties and will be confirmed in writing within three working days

### 14.4 THE ILL HEALTH CAPABILITY HEARING DECISION

If the case for dismissal is not established, a warning appropriate to the circumstances of the case may be issued.

If the decision is dismissal, then the employee will be informed immediately and advised of the right of appeal. The decision of the Headteacher (or Governing Body Disciplinary Panel), the reasons for it and the appeal arrangements will be confirmed in writing to the employee within three working days.

A copy of the letter will be sent to the Chair of Governors within 14 calendar days. The Chair of Governors will then formally confirm dismissal by letter to the employee.

## **15. ILL HEALTH CAPABILITY APPEALS**

All employees have the right to appeal against the issuing of any warnings or dismissal under ill health capability procedures

### **15.1 WARNINGS**

Any appeal arising as a result of a warning, must be made in writing within fourteen calendar days of the receipt of the decision. If the warning is given by a line-manager the appeal will be to the Headteacher, if the warning is given by the Headteacher, the appeal is to the Chair of Governors. If the Headteacher is the subject of the formal action the appeal will be to the Chair of Governors.

### **15.2 DISMISSAL**

Any appeal arising as a result of a dismissal, must be made in writing within fourteen calendar days of the receipt of a decision. The appeal will be to the Governing Body (with the exception of any Governors previously involved). To be quorate the appeal panel must consist of at least the same number of Governors as at the previous hearing.

At an appeal any sanction or penalty imposed will be reviewed, but it cannot be increased.

At any appeal hearing the employee will enjoy the same rights as at any disciplinary hearing. The Headteacher is likely to be the Presenting Officer at an appeal hearing.

The Clerk to the Governing Body will arrange all appeal hearings and inform all the parties concerned.

Whilst the appeal is a re-hearing of the original case, new evidence is permissible. If either party wishes to introduce new evidence, they should give notice to the other party at least ten working days before the appeal hearing. If either side produces new evidence at the appeal hearing, it is open to either side to request an adjournment for further investigation.

If new evidence of incapability or misconduct is produced at the appeal hearing, which would give rise to further capability or disciplinary allegations, the correct course of action would be to pursue the allegations at a new capability or disciplinary meeting, not at the appeal hearing.

If the recommendation for dismissal is not upheld, the Governors may decide to issue a further warning or, in appropriate cases, to demote the

employee rather than dismiss. Demotion involves a change in the employee's contract that requires his/her consent to the new arrangement.

The employee will be informed immediately at the conclusion of the hearing and the Clerk to the Governing Body will confirm the decision of the Appeal Panel/Governing Body in writing to the employee within three working days, giving the reasons for the decision.

There will be no further right of appeal for the employee following the decision of the Appeal Panel of the Governing Body. The employee will not be able to re-open the matters that have been considered by looking to invoke a different procedure, such as the Grievance Procedure.

## **16. REVIEW OF POLICY**

- 16.1 This policy is reviewed annually by the School. We will monitor the application and outcomes of this policy to ensure it is working effectively.