

PORTFIELD SCHOOL & SATELLITE CENTRES



POLICY DOCUMENT FOR CAPABILITY PROCEDURES FOR SUPPORT STAFF

This Policy will be reviewed in line with Portfield School's procedures on a biennial basis and has been agreed by Governors.

Headteacher Date: 5th February 2020

Chair of Governors Date: 5th February 2020

Policy to be updated by: January 2022

Portfield School Mission Statement

Working together Learning together Achieving together

At Portfield School we strive to

- Create a happy, safe, supportive and stimulating learning environment
- Value everyone
- Develop everyone's personal, social, emotional health and wellbeing
- Promote relevant academic and vocational skills
- Meet individual needs through an imaginative and flexible approach
- Enable all learners to achieve their full potential

UNCRC United Nations Convention on the Rights of the Child

- Portfield School places the values and principles of the UNCRC at the heart all policies and practices
- Portfield School is a Rights Respecting School



CAPABILITY PROCEDURE FOR SCHOOL SUPPORT STAFF

January 2020

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1. INTRODUCTION

- 1.1 This procedure deals with questions of competence, capability or performance which needs to be improved. The requirement for improvement is not considered to be a wilful disinclination by an employee to carry out his or her duties efficiently or effectively but is thought to be attributable to a lack of skill or aptitude.
- 1.2 The procedure is designed to be supportive of members of staff experiencing difficulties and is intended to give clear guidance to all involved when issues arise concerning capability. It is also designed to uphold and maintain the high standards of support staff in Pembrokeshire schools.
- 1.3 In law a reason for dismissal may be related to the capability of an employee for performing work of the kind which they are employed to do. However, a distinction should be drawn between capability issues and a lack of performance which is attributable to a wilful refusal to work satisfactorily. This is a matter of a conduct, and should be dealt with through the Governing Body's Disciplinary Procedure.
- 1.4 The procedure provides Governing Bodies, head teachers, and union representatives with fair and effective procedures to enable support staff in schools to improve to the standard required or to deal with other responses to unsatisfactory performance with dismissal as the last resort.
- 1.5 This procedure is not intended to exclude other measures which may be considered appropriate for the purpose of supporting an employee to improve performance. The procedure provides a set of stages which, whatever else is done, will provide the employee with opportunities to hear how and why his or her performance is considered unsatisfactory, to receive explanation about this, and to listen to, and take action on areas where improvements need to be made.
- 1.6 Any capability matter in relation to an employee who is a recognised trade union representative should be brought to the attention of the Director for Children & Schools or their representative, who will wish to ensure that the full-time official of that person's association or trade union is consulted.
- 1.7 The primary objective of this Procedure is to support employees to improve to the agreed standard required, with dismissal as the last resort. Should dismissal be necessary then the Governing Body will need to show that the employee was not competent. This can be done by demonstrating in evidence how and why it was thought that the employee's performance did not meet the required standard having considered the employee's job description and any professional standards as appropriate.
- 1.8 At all stages of the procedure employees should be given the opportunity to be accompanied by a trade union representative or work colleague.

2 SCOPE AND RESPONSIBILITY

- 2.1 This procedure applies to all contracted support staff employed by the Governing Body.
- 2.2 The procedure shall not apply to support staff during or at the end of their period of probationary service.
- 2.3 Where it is necessary to recommence this Procedure on more than two occasions spanning two academic years, the Head Teacher may consider that there is sufficient, cumulative evidence indicating serious performance issues that require the procedures to start at Stage 3 immediately.
- 2.4 Compliance with the requirements of equalities legislation should be maintained. The Head Teacher/line manager may need to seek further assistance to ensure reasonable adjustments are considered where an employee has a disability that falls under the Equality Act 2010.

3 DEFINITION

- 3.1 Lack of capability is defined as,

“.....a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard.”

4 INFORMAL CAPABILITY DISCUSSION

- 4.1 Prior to entering any discussions under this procedure, the performance issues should be addressed through the performance management process.
- 4.2 When a Head Teacher/line manager considers that it has not been possible to address issues through the performance management process and determines that action should be taken to support an employee to improve, then an informal discussion will take place. This will be to
 - 4.1.1 explain the concern surrounding performance and the need to improve;
 - 4.1.2 find out if the employee accepts that there is a problem and, if so, whether he or she will respond to constructive suggestions to aid improvement;
 - 4.1.3 listen to any explanations or statements made by the employee;
 - 4.1.4 discuss and document detailed arrangements as to how improvement can be made and the time involved. The “Action Plan” should involve additional training and development and an appropriate support programme. It must involve the setting of clear and achievable targets in a realistic timescale. The action plan

should take into consideration EWC professional standards where applicable.

4.1.5 ensure that at all stages, but particularly in the initial stage of seeking improvement that a named person, normally the line manager or the head teacher, is appointed to supervise and/or monitor the employee's progress, with the employee co-operating in this process.

4.1.6 The timescale adopted will be in accordance with the seriousness of the lack of capability of the employee. Consideration should be given to whether the problem is a specific or broader difficulty, whether it is of very recent concern or spanning a longer period of time. Normally, the period given for improvement will be no more than four working weeks.

4.2 At the end of informal action plan, the HeadTeacher/line manager will meet with the employee to discuss their development and make a decision as to whether the employee has met the agreed targets. If so, the process will cease. Alternatively, the employee will be informed that the process will progress to the formal stage.

4.3 The employee will be informed of their right of appeal against the decision.

5 FORMAL CAPABILITY STAGE ONE

5.1 If insufficient improvement has been achieved as a result of the informal support provided, the employee will be asked to attend a formal meeting to discuss the matter. The meeting will be conducted by the Head Teacher/line manager.

5.2 A minimum of five working days' notice in writing will be given to the employee.

5.3 The Head Teacher will notify the link HR Adviser at this stage.

5.4 At the meeting the Head Teacher/line manager will remind the employee of earlier informal discussions and the Action Plan. The employee should clearly understand the aspects of the poor performance that are giving concern. The employee and/or union representative will have the opportunity to raise any points which need to be considered.

A revised action plan will be agreed to include timescale for monitoring and review. Timescale for improvement will not normally exceed six working weeks.

5.5 At the end of the monitoring period a review meeting will be held to discuss progress towards targets. If the targets have been met the procedure will cease. Alternatively, a Formal Written Caution will be given by the Head Teacher/line manager and the employee informed the process will progress to Stage Two. Serious consideration will be given at this stage to

the ability of the employee to overcome the identified aspects of poor performance. Alternative solutions may well be considered such as redeployment. These alternative posts may be at a similar or lower grade.

5.7 The employee will be informed, in writing, of the outcome of Stage One and a copy of the letter sent to the link HR Adviser.

5.8 The employee will be informed of their right of appeal against the decision.

6 FORMAL CAPABILITY STAGE TWO

6.1 If insufficient improvement has been achieved as a result of the support provided at Stage One, the employee will be required to attend a formal meeting to discuss the matter. The meeting will be conducted by the Head Teacher/line manager.

6.2 A minimum of five working days' notice in writing will be given to the employee.

6.3 The employee and/or union representative will have the opportunity to raise any points which need to be considered.

A revised action plan will be agreed to include timescale for monitoring and review. Timescale for improvement will not normally exceed six working weeks.

6.4 At the end of the monitoring period a review meeting will be held to discuss progress towards targets. If the targets have been met the procedure will cease. Alternatively, a Final Written Caution will be given by the Head Teacher/line manager and the employee informed the process will progress to Stage Three.

6.5 The employee will be informed, in writing, of the outcome of Stage Two and a copy of the letter sent to the link HR Adviser.

6.6 The employee will be informed of their right of appeal against the decision.

7 FORMAL CAPABILITY STAGE THREE

7.1 This will be the responsibility of the Head Teacher in consultation with the link HR Adviser.

7.2 If insufficient improvement has been achieved as a result of the support provided at Stage Two, the employee will be required to attend a formal meeting to discuss the matter. The meeting will be conducted by the Head Teacher.

7.3 A minimum of five working days' notice in writing will be given to the employee.

7.4 The employee and/or union representative will have the opportunity to raise any points which need to be considered.

- 7.5 A revised action plan will be agreed to include timescale for monitoring and review. A revised action plan will be agreed to include timescales for monitoring and review. Timescale for improvement will not normally exceed six working weeks.
- 7.6 At the end of the monitoring period a review meeting will be held to discuss progress towards targets. The Head Teacher will review all previous discussions and action plans. It is the Head Teacher's responsibility to review all possible alternatives to dismissal.
- 7.7 If the targets have been met the procedure will cease. Alternatively, the Head Teacher will notify the employee that the matter will progress to Stage Four.
- 7.8 The employee will be advised of their right of appeal against the decision.

8 APPEALS PROCESS STAGES ONE TO THREE

- 8.1 Stage One appeal – the employee must inform, in writing, the Head Teacher within 5 working days of receiving the outcome letter. The appeal must be held prior to the next stage commencing.

The facts will be examined by the next senior manager who will either uphold the warning or allow the appeal, and whose decision is final. At this stage an employee can choose to be represented by either a work colleague or a recognised trade union official. In the event that the warning has been given by the Head Teacher, an appropriately trained governor will hear the appeal. Any governor hearing an appeal will not be permitted to sit on any subsequent Disciplinary & Dismissal Committee.

- 8.2 Stage Two appeal - the employee must inform, in writing, the Head Teacher within 5 working days of receiving the outcome letter. The appeal must be held prior to the next stage commencing.

The facts will be examined by the next senior manager who will either uphold the warning or allow the appeal, and whose decision is final. At this stage an employee can choose to be represented by either a work colleague or a recognised trade union official. The appeal cannot be heard by anyone previously involved in the process.

In the event that the warning has been given by the Head Teacher, an appropriately trained governor will hear the appeal. Any governor hearing an appeal will not be permitted to sit on any subsequent Disciplinary & Dismissal Committee.

- 8.3 Stage Three appeal - the employee must inform, in writing, the Head Teacher within 5 working days of receiving the outcome letter. The appeal must be held prior to the next stage commencing.

The facts will be examined by the next senior manager who will either uphold the warning or allow the appeal, and whose decision is final. At this stage an employee can choose to be represented by either a work

colleague or a recognised trade union official. The appeal cannot be heard by anyone previously involved in the process.

In the event that the warning has been given by the Head Teacher, an appropriately trained governor will hear the appeal. Any governor hearing an appeal will not be permitted to sit on any subsequent Disciplinary & Dismissal Committee.

9 FORMAL CAPABILITY STAGE FOUR

- 9.1 The employee will be required to attend a hearing with the Staff Disciplinary & Dismissal Committee. The employee will be given a minimum of 10 working days' written notice.
- 9.2 The committee must comprise at least **three** appropriately trained governors who have had no prior involvement with the case.
- 9.3 The link HR Adviser must attend the hearing and the Director for Children & Schools or their representative is also entitled to attend both the Staff Disciplinary & Dismissal and the Staff Disciplinary & Dismissal Appeals Committee meetings for the purpose of giving advice in all proceedings of the governing body relating to dismissal.
- 9.4 The Head Teacher will attend throughout the Staff Disciplinary & Dismissal and Staff Disciplinary & Dismissal Appeals Committee meetings and to present evidence of the lack of improvement. Due to the Head Teacher's prior involvement, they cannot become a member of either committee, influence or take part in the decision-making process.
- 9.5 The employee, or their trade union representative, will have the opportunity to present their case.
- 9.6 At this point the committee will withdraw to consider representations made and determine that either objectives have been met in which case the process stops, or insufficient progress has been achieved resulting in the termination of the employee's contract with relevant notice.
- 9.7 The employee will be informed, in writing, of the decision and have the right of appeal against this decision. The appeal should be sent to the Director for Children & Schools within 5 working days' of receipt of the outcome letter.

10 APPEALS PROCESS STAGE FOUR

- 10.1 In the event that the employee appeals the decision of the Staff Disciplinary & Dismissal Committee, he/she will be required to attend a hearing with the Staff Disciplinary & Dismissal Appeals Committee. The employee will be given a minimum of 10 working days' written notice.

- 10.2 The committee must comprise at least **three** appropriately trained governors who have had no prior involvement with the case.
- 10.3 The link HR Adviser must attend the hearing and the Director for Children & Schools or their representative is also entitled to attend both the Staff Disciplinary & Dismissal and the Staff Disciplinary & Dismissal Appeals Committee meetings for the purpose of giving advice in all proceedings of the governing body relating to dismissal.
- 10.4 The Head Teacher and the Chair of the Staff Disciplinary & Dismissal Committee will attend to present evidence of the lack of improvement.
- 10.5 The employee, or their trade union representative, will have the opportunity to present their case.
- 10.6 At this point the committee will withdraw to consider representations made and either uphold the decision of the first committee or overturn the original decision.
- 10.7 The employee will be informed, in writing, of the decision of the Appeals Committee.
- 10.8 This marks the end of the internal process.

11 EXCEPTIONAL CIRCUMSTANCES

- 11.1 In the exceptional case where the Head Teacher has overwhelming evidence that the continued employment of the employee will jeopardise the School, pupils' education or put the pupils or staff at risk of harm, it may be appropriate to move directly to issue a final written caution, or to refer the matter to the Staff Disciplinary and Dismissal Committee, in accordance with this procedure.
- 11.2 For this to occur, the employee's performance should fall so far short of what is required that improvement to the required standard of performance may be deemed impossible, or the employee's underperformance has a seriously detrimental effect in the School.
- 11.3 The Head Teacher, in consultation with the Chair of Governors, may also consider suspending the employee where it is considered necessary for the protection of pupils, staff or property, or where the employee's continued presence is likely to have a seriously detrimental effect in the School. This is only likely to occur in exceptional circumstances and where all alternative options have been explored. It is therefore strongly recommended that HR advice is sought in such instances.

12 EMPLOYEE ABSENCE DURING THE PROCEDURE

- 12.1 It is possible that an employee may become absent through ill health either before or during the Capability Procedure. While it may be reasonable to wait for the employee's recovery, the Head Teacher should immediately

seek HR advice relating to a referral to the Local Authority's Occupational Health team or an appropriately qualified health professional. The Occupational Health team or appropriately qualified health professional should then be able to give advice on:

- whether the sickness absence is related to the employee's performance issues; and
- whether the employee is able to continue to participate in the Capability Procedure.

12.2 Whilst it is difficult to continue to assess the performance of an absent employee, if at any stage of the procedure the body of evidence is strong enough to proceed and the employee is afforded the opportunity to offer an explanation or have it presented on their behalf, the Head Teacher may decide to:

- conclude the proceedings on the basis that the employee has achieved the required standard of performance and that it is sustainable; or
- continue the Capability Procedure to the next stage on the basis that the evidence shows that the employee has not consistently achieved the required standard of performance. This decision should be made in consultation with the Occupational Health team or appropriately qualified health professional who should be able to advise on whether the employee is well enough to present themselves or take part in the next stage of the process. If the employee is not well enough, the Head Teacher may decide to suspend the process until they are.

12.3 Where the evidence is strong enough to proceed to Stage Four of the procedure and the employee is absent from work through ill health, every effort should be made to ensure that the employee can attend the hearing to present themselves. However, if the employee is unable to attend, this should not unduly delay the hearing taking place and written representations or representatives attending in the employee's absence will be allowed instead.

12.4 Throughout this procedure, if it is the advice of the Occupational Health team or appropriately qualified health professional that there is no likelihood of the employee returning to work in the foreseeable future, then the Head Teacher should consider dealing with the employee's sickness absence through the School's Sickness Absence Procedure. The requirement to notify the Education Workforce Council under the appropriate regulations dealing with professional incompetence will be unaffected by this decision.

13 GRIEVANCES

- 13.1 Where an employee feels that they have been treated unfairly in the application of the Capability Procedure, this would be dealt with through the appeal process outlined in this Procedure.
- 13.2 If an employee feels that they have been treated unfairly or have been discriminated against, they may bring a grievance at any stage. The grievance should be heard separately and contemporaneously so that the capability procedures are able to continue uninterrupted. A final decision regarding the continuation of the capability procedures will be made on a case-by-case basis, in light of available evidence.
- 13.3 Subject to the above, initiation of the Capability Procedure does not in any way affect an employee's right to raise a grievance under the School's Grievance Policy.

14 REPORTING PROFESSIONAL INCOMPETENCE TO THE EDUCATION WORKFORCE COUNCIL

- 14.1 Employers have a legal responsibility to report cases of professional incompetence related to registered support staff directly to the Education Workforce Council where the employer:
- has ceased to use the services of a registrant on the ground of his/her professional incompetence; or
 - may have ceased to use the services of a registrant on that ground had s/he not ceased to provide those services (e.g. through resigning his/her post).
- 14.2 Where a registrant resigns at the informal stage of this Procedure, his/her case would not normally be referred to the Education Workforce Council, other than in the exceptional circumstances referred to in paragraph 4 of this Procedure (e.g. where the matter would have been referred directly to the Staff Disciplinary and Dismissal Committee, had the employee not have resigned).

STAFF DISCIPLINARY & DISMISSAL COMMITTEES

Governors are advised that where an appeal might arise from a decision by a committee, arrangements should be made to ensure that the membership of a Staff Disciplinary & Dismissal Committee remains quite separate from that of a Staffing Disciplinary & Dismissal Appeals Committee (See Annex B).

Such committees are usually **standing committees** of the governing body and meet as the occasion arises. Members of such committees are advised to take the time to familiarise themselves with the relevant procedures in advance of being called upon to use them.

Dismissal: Terms of Reference for Staff Disciplinary & Dismissal Committee

- (i) A committee established to consider the dismissal of a member of staff must comprise at least **three** governors.
- (ii) In the event of an appeal being made against the decision of a Staff Disciplinary & Dismissal Committee, the Staffing Appeals Committee should also comprise at least **three** governors.
- (iii) The Director for Children & Schools or his representative is entitled to attend for the purpose of giving advice in all proceedings relating to dismissal.
- (iv) The head teacher shall not be a member of the committee but should be available at all meetings to advise and support members. Meetings to be held as and when required.
- (v) The committee to consider and make initial decisions relating to the dismissal of staff.

Because of the sensitive nature of Staff Disciplinary & Dismissal Committees, it is advisable not to have much larger committees than indicated above as, with appeals and the non-availability of governors, there could be insufficient governors available to staff the committees at crucial times.

STAFF DISCIPLINARY & DISMISSAL APPEALS COMMITTEES

In the event of an appeal being made against any decision of a Staff Disciplinary & Dismissal committee of a Governing Body, an appeals hearing shall be convened, normally within ten **working days**' notice having been given.

Membership

1. The committee shall consist of (no fewer than three) governors.
2. The Head Teacher shall not be a member of the committee but shall be available at all meetings to advise and support members.
3. The Chair of the Staff Disciplinary & Dismissal Committee may be present at the meeting in order to explain the decision of the Staff Disciplinary & Dismissal Committee and to answer any questions raised which relate to the dismissal hearing but may not participate in the decision-making process.
4. No other governor who has been involved in a Staff Disciplinary & Dismissal Committee relating to the appeal may sit on the Staffing Appeals Committee.

Quorum

The quorum shall be (not less than three) governors.

Meetings

The Committee shall meet as and when required.

Terms of Reference

1. To hear appeals.