



## **Lindow Community Primary School**

### School Policies

### Control Sheet

Policy:	<b>Capability of Staff</b>
Policy Type:	<b>Statutory</b>
Author:	<b>Cheshire East Council</b>
Owner:	<b>Headteacher</b>
Approved by:	<b>Governing Body</b>
Reviewed:	<b>Annually</b>

## **Policy: Capability of Staff**

### **1. Introduction**

- 1.1 The aim of this policy is to establish the principles that Lindow Community Primary School will follow in managing employees about whose performance there are serious concerns that the appraisal process has been unable to resolve.
- 1.2 Capability issues are not part of the Staff Discipline, Conduct and Grievance procedure. However, if after careful investigation, poor performance is identified as an issue of misconduct, it may become necessary to use this procedure.

### **2. Definitions**

#### **Capability**

Capability is in relation to aptitude and the inability or limited ability of someone to perform their full job description to the required standard of performance. It may be due to poor standards of work, even with training and close supervision, or low output of work – where the person can produce work to the right standard but not in the right quantity.

#### **Equality**

The Governing Body will ensure that when implementing the Capability of Staff policy, no employee will be disadvantaged on the basis of their gender, transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility. This means that the policy may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

#### **Monitoring**

Data relating to capability cases will be collated and monitored regularly to ensure that the policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

In formulating this policy account has been taken of other relevant legislation and policies including the Human Rights Act, the Equality Act 2010.

### **3. Scope/Application**

This Policy and the associated Procedure applies to all teaching staff of Lindow Community Primary School who have completed their NQT Induction.

### **4. Policy**

- 4.1 The Headteacher/Manager and governors will support employees of the school to reach the required level of performance.
- 4.2 The Capability of Staff Procedure should be followed by the Headteacher/Manager and Governors to assist in the identification and investigation of a possible cause of incapability and, where necessary, in the drawing up of an action plan. The employee should fully understand the process and that if there is no improvement further action will be taken.

- 4.3 A consistent approach will be applied across the school, promoting fairness and equity throughout.
- 4.4 A decision to dismiss someone will be taken only after a full and proper process has been followed with proper safeguards to the individual.
- 4.5 Capability issues (non-health related) must normally be resolved within two terms.
- 4.6 It is the Headteacher/Governors' responsibility to set appropriate performance standards for all employees. National standards for teachers and headteachers and other standards set by the school or other relevant professional organisations will form part of the standards for these groups of staff.
- 4.7 It is the Headteacher/Manager and Governors' responsibility to ensure that employees are aware of their required performance level.

**Please note:** Where the Headteacher/Manager and Governors have concerns about an employee's performance they will not wait until the appraisal discussion to raise their concerns. Performance issues will always be discussed at the earliest possible opportunity.

## 5. Principles

- 5.1 Lindow Community Primary School recognises that when an employee cannot perform the duties required to an acceptable standard it does not necessarily constitute misconduct.
- 5.2 The Capability of Staff Procedure will be followed where an employee is not able to perform his or her duties because they do not have the skills, knowledge, experience physical ability or aptitude they need to fully carry out their job. Mental health may also be an issue.

There are six main principles underlying the operation of the Capability of Staff policy:

1. Employees must know what is expected of them, have concerns raised as they occur and be given help, advice and the opportunity and time to improve their performance.
2. To enable, wherever possible, the employee with a capability problem to perform in the contractual job. The contractual job will be that which has been agreed between the school and the employee.
3. To confirm that the responsibility for resolving capability situations rests with the Headteacher/Manager and Governors who may wish to take HR and/or Occupational Health advice.
4. To ensure that capability difficulties are dealt with efficiently, within agreed time periods and with clear outcomes resulting at all stages.
5. To recognise that while every effort will be made to help an individual with a capability problem, the school cannot guarantee to maintain employment.
6. The procedures will be applied irrespective of the age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation of the person concerned. If the person has a health issue or a disability this will be taken into consideration, before formal capability procedures are started and at each subsequent stage.

## 6. Monitoring

Data relating to capability cases will be collated and monitored regularly to ensure that the policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

In formulating this policy account has been taken of other relevant legislation and policies including the Human Rights Act, the Equality Act 2010,

## Appendix 1

### Capability Procedure for Staff

#### 1. Appraisal and Capability

- 1.1 Within Lindow Community Primary School it is expected that any problems with an employee's performance should be identified and responded to at the earliest time within normal appraisal arrangements and practices.
- 1.2 This procedure applies only to employees about whose performance there are serious concerns that the appraisal process has been unable to address.
- 1.3 The employee will have been told by their appraiser, at a review meeting, that their progress has not been satisfactory and that the appraisal system will no longer apply. The employee will then have up to 5 working days to consider and review their position.
- 1.4 After this, the employee will be notified in writing that their performance will be managed under the capability procedure, and will be invited to a formal capability meeting.

#### 2 Capability Meeting: Stage 1

- 2.1 The Headteacher/Manager/Chair of Governors will arrange a date for a formal stage 1 capability meeting. At least five working days' notice will be given and the notification will contain sufficient information regarding the concerns about performance and their possible consequences to enable the employee to prepare to answer the case. It will also contain copies of any written evidence, the details of the time and place of the meeting, and will advise the employee of their right to be accompanied by a work colleague or a trade union official. A copy of the Capability Procedure will be enclosed.
- 2.2 This meeting is intended to establish the facts. It will be conducted by the Headteacher /Manager/Chair of Governors who may be supported by a Schools HR Adviser. The Appraiser will attend to present the concerns that have prompted the move to formal capability.
- 2.3 The employee will have the opportunity to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 2.4 The Headteacher/Manager/Chair of Governors will take full account of the employee's circumstances both at work and, if appropriate, outside work. In particular, s/he should be careful to explore fully the circumstances behind an apparent lack of capability, including any

disability, and give the individual every opportunity to present his/her view or explanation of the situation.

- 2.5 The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 2.6 The person conducting the meeting may also adjourn the meeting, for example, if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
- 2.7 During the meeting the person conducting the meeting will consider:
- alterations/adaptations to duties/working environment consistent with the needs of the school and which do not change the general character of the job
  - seeking alternative work initially within the school
  - agreed and voluntary termination of contract.
- 2.8 At the conclusion of the meeting the person conducting the meeting will:
- identify the professional/performance shortcomings, for example, which of the standards expected of teachers are not being met;
  - set out the standard of performance that will enable the employee to be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary standard has been reached);
  - agree any support that will be available to help the employee improve their performance;
  - set out the timescale for improvement and/or Action Plan and explain how performance will be monitored and reviewed. The timescale will depend on the circumstances of the individual case but should not exceed one term or equivalent and
  - warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this could be without a further review period.
- 2.9 A performance monitoring and review period will follow the formal capability meeting. Monitoring, evaluation, guidance and support will continue during this period. Dates for review meetings with the appropriate manager will be agreed. At the end of the period, the member of staff will be invited to a formal review meeting.
- 2.10 The person who conducted the meeting will write to the employee within 5 working days confirming the details advised at 2.8.

### **3.0 Review Meeting**

- 3.1 The Headteacher/Manager/Chair of Governors will write to the employee to convene a formal Review Meeting. At least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work colleague or a trade union official.

- 3.2 The meeting will be conducted by the Headteacher/Manager/Chair of Governors who may be supported by a Schools HR Adviser. The Appraiser will attend to present the evidence of progress during the review period.
- 3.3 The employee will have the opportunity to respond to concerns about their performance and to make any relevant representations.
- 3.4 If 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.
- 3.5 If the person conducting the meeting is satisfied that some progress has been made and there is confidence that more progress is likely, it may be appropriate to extend the monitoring and review period but remain within Stage 1;
- 3.6 If no, or insufficient improvement has been made during the monitoring and review period, the employee will be advised that the management of their performance is now within Stage 2 of the Capability Procedure.

#### **4.0 Capability Meeting: Stage 2**

- 4.1 The Headteacher/Manager/Chair of Governors will arrange a date for a formal stage 2 capability meeting. At least five working days' notice will be given and the notification will contain sufficient information regarding the concerns about performance and their possible consequences to enable the employee to prepare to answer the case. It will also contain copies of any written evidence, the details of the time and place of the meeting, and will advise the employee of their right to be accompanied by a work colleague or a trade union official. A copy of the Capability Procedure will be enclosed.
- 4.2 During the meeting the person conducting the meeting will again consider:
  - Alterations/adaptations to duties/working environment consistent with the needs of the school and which do not change the general character of the job.
  - Seeking alternative work initially within the school.
  - Mutual agreement to termination of contract.
- 4.3 At the conclusion of the meeting the person conducting the meeting will:
  - confirm the professional/performance shortcomings,
  - set out the standard of performance that will enable the employee to be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary standard has been reached);
  - explain any support that will be available to help the employee improve their performance;
  - set out the timescale for improvement and/or Action Plan and explain how performance will be monitored and reviewed. The timescale will depend on the circumstances of the individual case but should not exceed six weeks and
  - warn the teacher again that if (at the end of the period or at any review meeting during the period) sufficient progress has not been made then the employee may be called to a

decision meeting at which it may be recommended that their employment be terminated on grounds of incapability.

- 4.4 The person who conducted the meeting will write to the employee within 5 working days confirming the details advised at 4.3.
- 4.5 A further performance monitoring and review period will follow the formal review meeting. Monitoring, evaluation, guidance and support will continue during this period. Dates for review meetings with the appropriate manager will be agreed.
- 4.6 At the end of the period, the manager will hold a final review meeting and advise the member of staff that they will be invited to a Decision Meeting and whether the manager will report that an acceptable standard of performance has been reached or that performance remains unsatisfactory and that the Decision Meeting will consider a recommendation for dismissal.

## 5.0 Decision Meeting

- 5.1 Where the Headteacher has delegated power to take the initial dismissal decision (IDD), or where an acceptable standard of performance has been reached, the employee will be called to a Decision Meeting chaired by the Headteacher.
- 5.2 Alternatively, where the Headteacher is the subject of the proceedings; is the Appraiser or appropriate manager or has chaired the Stage 1 and 2 meetings; or the Headteacher does not have delegated power to dismiss, the Decision Meeting will be conducted by a Panel of one or more governors to whom the Governing Body has delegated the power to take the initial decision to dismiss.
- 5.3 Where a Decision Meeting is to be convened the employee will be informed by letter. The letter will enclose a copy of this Procedure and advise him/her of:
  - the place and time of the Meeting
  - details of the alleged incapability
  - the right to be accompanied by a trade union official or work colleague
  - the right to call witnesses

The letter will either be handed to the employee or sent by recorded delivery and first class post. Reasonable time (a minimum of five working days) must be allowed between the receipt of the letter and the Meeting so as to allow the employee to prepare his/her case.

- 5.4 The conduct of the Decision Meeting will be as set out in Appendix 1 to this Procedure.
- 5.5 The Headteacher/Panel will be supported by a Schools HR Adviser as may the manager presenting the case. The Schools HR Adviser will normally act as the representative of the Director of Children, Families and Adults.
- 5.6 The Headteacher (except where s/he is the person concerned or is conducting the Meeting) will present the management case and may call witnesses in support
- 5.7 The Headteacher/Panel may dismiss the employee or may impose a lesser sanction, e.g. demotion or no sanction at all.

5.8 The decision will be confirmed by letter, which will either be handed to the employee or sent by recorded delivery and first class post.

5.9 In the case of a dismissal the letter will state:

- (i) The reasons for this and the right of appeal; and
- (ii) The date from which the dismissal will take effect.

In the case of alternative sanctions the letter will state:

- (i) The sanction being applied;
- (ii) The reasons for this; and
- (iii) the right of appeal.

5.10 The dismissal letter will be written on behalf of the Governing Body and Cheshire East Council.

## **6.0 Decision to Dismiss**

The power to decide that members of staff should no longer work at this school has been delegated to one or more governors acting with the Headteacher.

## **7 Appeals**

7.1 An employee has the right to appeal against dismissal or demotion under this Procedure which will be dealt with in accordance with Appendix 2. Appeals must be made, in writing, stipulating the grounds of the appeal, within ten working days of receipt of the letter confirming the action.

7.2 The conduct of the Appeal Hearing will be carried out in accordance with Appendix 1 to this Procedure. i.e. as a full re-hearing of the case by an Appeal Panel of the Governing Body made up of three governors (excluding any governor involved in the Decision Meeting)

7.3 At any appeal the employee has the right, if they so wish, to be accompanied by a trade union official or work colleague.

7.4 If an appeal reverses the decision to dismiss the termination notice will be rescinded

## **8 Timescales**

8.1 Where the formal capability procedure is applied, action over both Stages should be taken over no more than two terms or their equivalent.

## **9.0 Absence**

9.1 Where application of the Procedures results in absence of the employee the advice of Occupational Health will be obtained immediately as to how long the absence could be expected to last for.

9.2 The employee will be advised in writing that the performance issues which prompted the application of the Procedure will be addressed on their return to school and that the Procedure will be applied at the point reached when the absence began.

9.3 The employee's absence will be managed under the school's Attendance Management Policy.

## 10 Links with Staff Discipline, Conduct and Grievance Policy

- 10.1 An employee who has been advised at a review meeting that their performance is to be managed under the Capability Procedure may not raise concerns under the Grievance Procedure except where these are about matters unrelated to their performance or its management.
- 10.2 Any concerns/grievances an employee has about the application or progress of the Capability Procedure should be raised within that procedure. Consideration may be given to the suspension of proceedings while these are addressed but it is generally expected that these will be dealt with as part of or in parallel to the performance monitoring and review process and not lead to an extension of the timescale for improvement.
- 10.3 If an employee has a grievance about an unrelated matter, this may be pursued simultaneously but arrangements under this procedure will take precedence over those relating to that grievance.

## 11 Referral to the Secretary of State

By law, where an employer –

- (a) has ceased to use a teacher's services on grounds relating to his professional incompetence; or
- (b) might have ceased to use a registered teacher's services on such a ground had the registered teacher not ceased to provide those services, the employer may report the facts of the case to the Secretary of State and provide him/her with certain information in relation to the teacher.

Therefore, where a teacher is dismissed for incompetence, the School/Council will refer the case to the Secretary of State. A teacher may also be referred to the Secretary of State if s/he leaves his/her job (even under the terms of a Compromise Agreement) while within formal procedures. A teacher may not be referred to the Secretary of State if s/he leaves his/her job while within formal procedures but improving, and it was considered improbable that dismissal would have been the outcome.

## Appendix 2: Conduct of a Decision Meeting

The procedure to be adopted at a Decision Meeting will normally be:

1. The Meeting will be conducted by either the Headteacher or a Panel (normally consisting of 3 members) of the Governing Body as appropriate.
2. The Headteacher or Panel conducting the Meeting may be advised/supported by a Schools HR Adviser.
3. The Headteacher or Panel conducting the Meeting will satisfy himself/herself/themselves that the employee understands the purpose of the Meeting, the nature of the incapability and the possible implications arising from it.
4. The management case will be presented normally by the Appraiser or line manager who may also be supported by a Schools HR Adviser, and who will describe the case. The presentation may include witnesses, written statements or other documents where these are considered necessary.
5. The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
6. The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of his/her case. (Where it is the intention to submit written Statements of Case these must be exchanged by both sides at least five working days prior to the hearing.)  
Where witnesses are school or Council employees they should be given reasonable time off with pay to attend.
7. The presenting officer will be given the opportunity to question the employee, his/her representative and any witnesses called in his/her defence.
8. At any stage during the Meeting the Headteacher or Panel conducting the hearing and any adviser(s) may ask questions of the employee, the presenting officer or such other persons, as they may consider appropriate in order to ascertain the facts and arguments.
9. The presenting officer will then be invited to make a closing statement not introducing any new material.
10. Finally the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.
11. Both parties will withdraw to allow the person/group conducting the hearing to review and consider the evidence in conjunction with any advisers.
12. The Headteacher or Panel will then recall both parties to inform them of his/her/their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made and communicated to the employee within five calendar days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post with a copy to the trade union representative or work colleague and the presenting officer.

## Appendix 3: Appeals

### 1. Appeal against dismissal

1.1 Appeals must be made, in writing, stipulating the grounds of the appeal, within ten working days of receipt of the letter confirming the action. In order to deal with the appeal expeditiously the hearing will normally take place within 28 calendar days of the appeal being lodged.

The employee will be given in writing a minimum of 5 working days notice of the time and place of the hearing, and will be allowed to be represented by either their trade union representative or work colleague.

1.2 An appeal against a decision to dismiss an employee will be heard by an Appeal Panel of the Governing Body (normally consisting of 3 members, and no member who previously took part in the Decision Meeting), with full delegated powers.

1.3 The Appeal Panel will either:

- (i) Confirm the decision to dismiss the employee; or
- (ii) Withdraw the decision to dismiss the employee; or
- (iii) Vary the decision and take alternative action(s) in accordance with the Procedure.

1.4 The decision of the Appeal Group will be final and binding.