

# Westmorland Primary School

## Performance Capability Policy & Procedure

### School Support Staff 2024-2026

<b>Produced by</b>	People and Development Services, Corporate Support Services Directorate
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If you need this document in a different format please telephone  
0161 474 4777 (internal 4777)



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# School Support Staff Performance Capability Policy

## 1. Introduction

- 1.1 This document sets out the school's policy and procedures for dealing with performance related capability situations i.e. those situations due to ability rather than deliberate actions which would be disciplinary issues.
- 1.2 This policy is written in accordance with the Employment Rights Act 1996; Employment Relations Act 1999; Employment Act 2008 and the ACAS (Advisory, Conciliation and Arbitration Service) Guidance on Performance Management and after consultation with the Trade Unions and Associations representing Headteachers, teachers and support staff employed in schools by Stockport Metropolitan Borough Council.
- 1.2 The general direction of the school is the responsibility of the Governors in consultation with the Headteacher and in accordance with the School Governance and Staffing Regulations, 2003. Subject to the provision of the Regulations the Headteacher is responsible for the internal organisation, management and discipline of the school including the performance management of staff.
- 1.3 The Governing Board and the Headteacher are responsible for applying this procedure in a fair and equitable way.
- 1.4 The law delegates dismissal decisions to one or more governors, the Headteacher, or one or more governors and the Headteacher. Governors confirm in this policy, from their scheme of delegation, those with the power to dismiss are (Name, Designation), (Name, Designation) and (Name, Designation). Advice can be sought from the People & Organisational Development (POD) team.
- 1.5 For the purpose of this policy, the generic term "manager" is used in reference to anyone with responsibility for managing employee performance. This may be the Headteacher, a member of the senior teaching team, or a line manager of support staff within the school.

## 2. Scope of the policy

- 2.1 This policy and procedure applies to all support staff within the school.



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- 2.2 The capability procedure deals with an employee's failure to achieve a satisfactory level of performance. It does not apply to cases of incapacity due to ill health or to employees who are within their probationary period which are dealt with under separate procedures for resolving such matters.

### **3. Policy statement**

- 3.1 The Governing Board believes that in order to promote good employee relations and practices it is necessary to demonstrate that employees will be treated fairly, reasonably and consistently in matters relating to performance capability.
- 3.2 Governors, Head teachers and Senior Teams within the schools have a responsibility to maintain high standards of performance and support employees whose performance needs to be improved. If matters of underperformance are not addressed at an early stage a situation may escalate and result in a higher sanction.
- 3.3 Prior to any decision regarding performance management action being taken, all employees should be allowed the opportunity to state their case when a performance matter arises and ensure that all facts of the case have been thoroughly investigated prior to any formal meeting/hearing.
- 3.4 Employees will have the right to be represented by a colleague or a trade union representative at all formal performance capability meetings/hearings and appeals conducted under the Performance Capability policy.
- 3.5 All parties will ensure that all processes progress as quickly as is reasonably possible for the benefit of the school and the employee. Repeated adjournments will be discouraged.
- 3.6 Employees will have the right of appeal against any formal performance capability action taken under this policy and procedure.
- 3.7 Employees should be confident that the School will comply with its obligations with regard to the Equalities Act 2010 in terms of reasonable adjustments.
- 3.8 Except in the case of gross negligence (which may be dealt with under the disciplinary procedure) no one will be dismissed for a first incident of poor performance.
- 3.9 Employees whose performance is being managed through this procedure will not receive pay increments until they successfully complete the performance review period.
- 3.10 The School accepts that appropriate training, support and guidance should be provided to employees before they can be expected to reach appropriate standards of job performance.
- 3.11 High performance and productivity are also dependent on effective working relationships and the fair and reasonable handling of grievances is an important element in creating and maintaining those relationships.



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## 4. Roles and Responsibilities

This section outlines the roles and responsibilities for the main parties involved in the management of performance capability. These lists are not exhaustive.

### 4.1 The Governing Board

The law delegates dismissal decisions to one or more governors and the Headteacher. Governors have stated in 1.4, from their scheme of delegation, who has the authority to dismiss.

The Governing Board is responsible for establishing procedures for the management of staff performance. This function cannot be delegated.

### 4.2 Headteacher and Senior Leadership Team

Headteachers and the Senior Leadership Team (SLT) play a lead role in maintaining positive employment relationships within the school. They are responsible for ensuring that:

- employees are aware of this policy and associated procedures and that managers are able to deal effectively with performance management situations in the workplace;
- an appropriate and effective communication and training plan is in place to embed this policy and procedure into the school
- the policy and procedures are applied in a fair and consistent manner and appropriate action is taken against managers and supervisors who fail to manage performance in line with this policy
- employees are made aware of the standard of performance expected from them;
- minor work performance issues are dealt with informally in the first instance, and promptly;
- employees are given every opportunity to demonstrate capability within their role, responding to grievances promptly;
- any changes to timescales outlined in this policy and procedure are communicated to the employee involved, explaining why; and
- advice and guidance is sought, when necessary, from the school's HR provider.

### 4.3 Employees

All employees are responsible for:



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- performing their job to a satisfactory level and being committed to achieving high levels of performance;
- raising an issue at work promptly with their manager and pursuing the issue if it is not resolved informally at a local level;
- arranging representation at investigatory meetings; formal performance capability meetings/hearings and appeals conducted under this policy and procedure; and
- engaging in any learning and development in relation to this policy and procedure

#### **4.4 Human Resources**

The school's HR provider plays an important role in supporting the school to manage performance effectively. The HR provider's role is to:

- provide support and guidance to managers that will assist them in managing employee relations issues;
- assist managers with preparing and presenting management's case at a meeting (where necessary);
- be present at a meeting to provide advice to the panel and attend subsequent deliberations;
- support managers and employees on the interpretation and application of this policy;
- provide skills and knowledge-based training to enable managers to fulfil their responsibilities under this policy and procedure

#### **4.5 Employee's representative**

A trade union representative or work colleague at any formal meetings/hearings, including appeal hearings, held under the Performance Capability Procedure, can accompany the employee.

The role of the employee's companion is to provide general support to the employee, so that the individual can fully participate in the meeting. This may include, for example, seeking clarification of any questions, responses or points raised, to assist understanding. The representative may present and sum up the employee's case, respond on the employee's behalf to points raised at the meeting, and confer with the employee during the meeting.

The employee's representative cannot answer a question directly on behalf of the employee.



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## 4.6 The person or panel conducting a performance capability hearing

A panel made up of the Headteacher and two Governors will usually conduct a performance capability hearing (Stage 3) or, where the Headteacher is the line manager, a panel of three Governors. They will have had no prior involvement with the case and have the authority to dismiss if necessary. An HR representative will be present to advise the panel and to ask questions. The Chair of the panel will make the decision on the outcome of the meeting based on all the evidence presented.

## 5. Links with other policies and procedures

In dealing with employee relations issues, managers may also need to make reference to other policies, procedures and information including the following:

- Confidential Reporting (Whistleblowing) – Model Policy
- Counselling Referrals
- Employee Relations (Discipline & Grievance) Model Policy
- Dignity at Work Policy
- Sickness Absence Policy

These policies are available from the school.

## 6. Standards of Performance

6.1 Standards of performance are necessary for promoting good employee relations and ensuring fair and consistent treatment of individuals. School employees are expected to maintain standards of performance and any breach of performance standards will be subject to investigation and potentially formal action.

6.2 The standard of performance expected by the school can be found in the document "Safer Working Practices in Schools".

6.3 Certain cases of poor performance may be so serious that the first occurrence would probably call for summary dismissal e.g. gross negligence. Acts which constitute such under-performance are those resulting in a serious breach of the terms of employment and may be more appropriately dealt with under the disciplinary policy and procedure.

6.4 Examples of poor performance are at Appendix 1 – this list is not exhaustive.



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## **7. Employees with more than one post**

Some employees may hold more than one post within the school. Where the school loses confidence in an employee such as to confirm dismissal from one contract it is reasonable to expect that no other employment can be continued although this may not always be the case if the employee's performance within the other role/s is satisfactory.

## **8. Referral to Statutory Bodies**

There are statutory duties placed on employers to refer individual cases to national bodies where the issue involves safeguarding children and/or vulnerable adults. The Chair of Governors is responsible for making any referrals to statutory bodies.



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# Performance Capability Procedure

## 9. Introduction

9.1 This procedure should be used when an employee's performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for resolving issues, ideally through the improvement of the employee's performance. As a last resort, it specifies the circumstances in which the employee may be redeployed to more suitable work or dismissed on the grounds of performance capability.

9.2 Where an employee's poor performance is believed to be the result of deliberate negligence, or where serious errors have been made to the detriment of the school, managers may decide to use the disciplinary procedure instead. Advice should be sought from the school's HR provider.

## 10. Informal Procedure

Before using the formal stages of this procedure, the employee should receive feedback from their manager setting out the concerns about the employee's performance and how it can be improved, agreeing reasonable timescales for improvement.

When such informal discussions do not lead to the employee improving their performance to an acceptable level the manager should proceed with the formal procedure as outlined below. Further information can be found in the Guidance Notes for Managers – Performance Capability.

## 11. Formal Procedure

### Stage 1 – Formal performance capability meeting

- 11.1 Where informal discussions do not lead to a satisfactory improvement in the employee's performance, the employee will be invited to attend a formal, performance capability meeting. The purpose of a performance capability meeting is to discuss the employee's performance and decide what measures should be taken, with a view to securing the required improvement in the employee's performance.
- 11.2 The meeting will be conducted by the employee's manager, usually supported by the school's HR provider. The manager should invite the employee to a stage 1 meeting to discuss their concerns, giving at least 5 working days' notice.



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- 11.3 The employee should be advised that they have the right to be accompanied to the meeting by a trade union representative or work colleague.
- 11.4 At the meeting, the employee will be given the opportunity to respond to any feedback about their performance and to put forward any explanation they have for the matters identified by the manager as amounting to poor performance.
- 11.5 The outcome of the meeting may be:
- to issue a written warning, which may be supplemented by a mutually agreed performance improvement programme designed to bring the employee's performance up to an acceptable level;
  - to revert to the informal stage or to other policies which may be more appropriate to the matter raised;
- 11.6 The improvement programme should include specific, measurable, realistic and timed actions and details of any support or training needed by the employee to achieve the required levels of performance. Progress against the programme should be monitored regularly
- 11.7 A review period should be agreed (normally not less than 3 months) so that the improvement programme can be implemented. The employee should be warned that failure to improve their level of performance to the required standard by the end of the review period may result in stage 2 of the performance capability procedure being implemented which could lead to the employee being given a final written warning.
- 11.8 The outcome of the meeting should be confirmed in writing within 3 working days.
- 11.9 At the end of the review period, the manager and employee should meet to discuss the completion of the performance improvement programme and the outcome; this should also be confirmed in writing. If performance has reached the required standard, an agreement to maintain the standard of performance should be made between the manager and employee; this agreement should cover how the employee's performance will be measured going forward. The decision should remain 'live' for 12 months. This means if the employee's performance improvement is for a short period of time then the manager has the option of returning immediately to the same point of the procedure.

If there has been insufficient improvement then the employee should be invited to attend a performance capability meeting under Stage 2 of this procedure.

## **12. Stage 2 – Formal performance capability meeting**



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- 12.1 Where the first formal discussion does not lead to a satisfactory improvement in the employee's performance, the employee will be invited to attend a second performance capability meeting. The purpose of the performance capability meeting is to discuss the employee's performance and decide what measures should be taken, with a view to securing the required improvement in the employee's performance.
- 12.2 The meeting will be conducted by the employee's manager, usually supported by the school's HR provider. The manager should invite the employee to the stage 2 meeting to discuss their concerns, giving at least 5 working days' notice. The employee should be provided with a copy of the improvement programme agreed and any documentation the manager intends to refer to.
- 12.3 The employee should be advised that they have the right to be accompanied to the meeting by a trade union representative or work colleague.
- 12.4 At the meeting, the employee will be given the opportunity to respond to any feedback about their performance and to put forward any explanation they have for the matters identified by the manager as amounting to poor performance.
- 12.5 The outcome of the meeting may be:
  - to issue a final written warning, which may be supplemented by a mutually agreed performance improvement programme designed to bring the employee's performance up to an acceptable level;
  - to revert to the informal stage, Stage 1 or to other policies which may be more appropriate to the matter raised;
- 12.6 The performance improvement programme should be updated to reflect the outcome of the meeting. Progress against the programme should be monitored regularly.
- 12.7 A review period should be agreed (normally not less than 3 months) so that the improvement programme can be implemented. The employee should be warned that failure to improve their level of performance to the required standard by the end of the review period may result in stage 3 of the performance capability procedure being implemented which could lead to dismissal on the grounds of performance capability.
- 12.8 The outcome of the meeting should be confirmed in writing within 3 working days.
- 12.9 At the end of the review period, the manager and employee should meet to discuss the completion of the performance improvement programme; the manager should also inform the employee of the outcome both verbally and in writing.



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If performance has reached the required standard, an agreement to maintain the standard of performance should be made between the manager and employee; this agreement should cover how the employee's performance will be measured. The decision should remain 'live' for 12 months. This means if the employee's performance improvement is for a short period of time then the manager has the option of returning immediately to the same point of the procedure. If there has been insufficient or no improvement then the employee should be invited to attend a formal, performance capability hearing under Stage 3 of this procedure.

### **13. Stage 3 – Formal performance capability hearing**

- 13.1 If the employee's performance has shown no, or insufficient, signs of improvement over the review periods, then a performance capability hearing will be arranged. The manager should write to the employee inviting them to the hearing, giving a minimum of 10 working days' notice. The letter should advise them that one possible outcome of the hearing could be dismissal. The employee should also be notified of their right to representation at the hearing. The employee should confirm their attendance at the hearing.
- 13.2 The meeting will usually be heard by a panel made up of the Headteacher and two Governors, supported by the school's HR provider.
- 13.3 The manager should prepare a management report to be presented at the hearing. The employee should prepare their case to be presented at the hearing. The manager should write to the employee at least 8 working days in advance of the hearing providing copies of all documents that will be presented at the hearing, including the management report. The employee should also provide copies of all documents that will be presented at the hearing, at least 10 working days in advance of the hearing.
- 13.4 Both management and the employee will present their case at the hearing, calling any witnesses if necessary. The hearing will be adjourned whilst the panel considers the manager's and employee's evidence. The length of the adjournment will depend on what, if any, further investigations are required. If this is the case, management will agree a reasonable timescale with the employee.

Following any adjournment, the meeting will be reconvened and the Chair of the Panel will deliver the decision and the action, if any, to be taken.

The outcome of the meeting may be:

- A decision to take no further action;
- The issuing of another performance management warning with a date for further review;
- An offer to redeploy the employee to alternative work; or
- A decision to dismiss the employee



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- 13.5 The employee will be sent a letter detailing the outcome of the meeting within 3 working days of the hearing. The employee should acknowledge receipt of the letter by returning a signed copy; this will be placed on the employee's personal file.

## **14. Redeployment**

- 14.1 Any offer to redeploy the employee will be entirely at the school's discretion. Such an offer will be made only where the school is confident that the employee should not be allowed to continue in their current role and will be able to perform well in the redeployed role. While the employee is free to refuse any offer of redeployment, the only alternative available will usually be dismissal. Where an employee is redeployed as an outcome of the Performance Capability procedure the salary protection scheme will not apply.

## **15. Appeal against performance capability action not resulting in dismissal**

- 15.1 The employee should appeal in writing to the nominated person (as outlined in the outcome letter) setting out the grounds for appeal, within 10 working days of receipt of the outcome.
- 15.2 The letter of appeal should clearly set out the basis of the appeal which might include unfairness of the judgement, severity of the penalty, procedural irregularities or the existence of new evidence.
- 15.3 The employee will be given not less than 10 working days' notice of the date, time and venue for the appeal hearing. Documents relating to the appeal will be circulated at least 5 working days in advance of the appeal hearing.
- 15.4 The appeal will usually be chaired by the Headteacher, or where the Headteacher has previously been involved with the case, another member of the Senior Leadership Team or a nominated Governor.
- 15.5 Employees have the right to representation at an appeal hearing.
- 15.6 Both the management side and the employee will present their cases at the hearing. Unless there are exceptional circumstances it will not be usual for witnesses to be called.
- 15.7 The manager/governor hearing the appeal will be advised by the school's HR provider and will, within 5 working days, write to the employee giving the outcome of the appeal which could be:
- Confirming the original action
  - Substituting a lower level of action
  - Upholding the appeal



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15.8 A copy of the outcome letter will be placed on the employee's personal file.

## **16. Dismissal**

16.1 If the school believes that there is no alternative role available and suitable for the employee, and the employee has consistently failed to meet an acceptable standard of performance, the school may decide to dismiss.

16.2 Any dismissal will usually be with notice in accordance with the employee's contract. However, where dismissal is on the basis of gross negligence this may be without notice.

16.2 Where an employee is dismissed in accordance with this procedure, they will have a right of appeal.

## **17. Appeal against dismissal**

17.1 In the event of dismissal, the employee has the right of appeal to the Chair of Governors.

17.2 The appeal against dismissal should be made in writing to the Chair of Governors within 10 working days of receipt of the written confirmation to dismiss. The letter of appeal should clearly set out the basis of the appeal which might include unfairness of the judgement; severity of the penalty; procedural irregularities or the discovery of new evidence.

17.3 On receipt of the written notice of appeal, the Chair of Governors will organise a date with a further (Appeal) panel of the Governing Board within 10 working days. The Appeal Panel will normally meet within 30 working days.

17.4 The employee will be given at least 10 working days' notice of the Appeal Panel meeting. Employees have the right to representation and should confirm their attendance at the meeting in advance.

17.5 Both management and the employee should submit copies of any documents they wish to refer to or rely upon in the appeal meeting at least 8 working days before the meeting.

17.6 Both management and the employee will have the opportunity to present their cases at the Appeal Meeting and call any witnesses if necessary.

17.7 The appeal process should not be unnecessarily protracted and the Appeal Panel will normally seek to reach a decision on the outcome within 24 hours of the hearing. Where further information/investigation is required an extended timescale to enable this will be discussed with the employee.

17.8 The Chair of the Appeal Panel will write to the employee giving the outcome of the appeal within 5 working days of reaching their decision, which could be to:



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- confirm the original dismissal action
- substitute the original dismissal action with a different action or
- uphold the appeal

The letter will be placed on the employee's personal file.

- 17.9 If an employee is dismissed and subsequently appeals against that dismissal they will not receive any payment for the period of time between their dismissal and their appeal hearing unless they are reinstated as a result of the appeal.

If the appeal is upheld, the employee will be immediately re-instated and return to work. They will then receive the full pay for the period of time between their dismissal and return to work which would normally have been received had they been at work.

## **18. Employee Support**

The school understands that when there is a need to use the performance capability procedure it can be a difficult time for those involved. In addition to the support offered by trade unions, employees have access to counselling services and training courses.

## **Appendix 1**

### **Examples of Poor Performance**

The following list contains examples of poor performance. It is not intended to cover all possible circumstances which may arise.



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- Poor prioritizing, timing, scheduling of work
- Slow response to work requests
- Untimely completion of work, failure to meet deadlines
- Quality of work (failure to meet quality standards)
- Frequent inaccuracies/errors
- Failure to meet expectations for work quality, cost, service
- Customer/client dissatisfaction
- Waste of materials
- Inappropriate or poor work methods
- Failure to follow a job through
- Inability to cope with instructions given
- Inability to cope with a reasonable volume of work to a satisfactory standard
- Attitude to work, e.g. poor interpersonal skills, lack of commitment and drive.
- Lack of innovation
- Poor decision making