



*Let your light shine*

# Frieth C.E.C. School

## Capability Policy & Procedure for School

**Member of staff responsible:** Headteacher

**Governing body committee responsible:** PRP committee

**Reviewed Annually**

**Headteacher's signature:** Martin Gosling

**Chair of Governor's signature:** Jill Dean

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**BUCKINGHAMSHIRE COUNCIL CAPABILITY AND PERFORMANCE  
IMPROVEMENT POLICY AND PROCEDURE  
FOR SCHOOLS**

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## 1. INTRODUCTION

- 1.1 Buckinghamshire Council recognises that our excellence is down to our staff and their ability to perform in their roles. As a direct result of this we want to ensure that all employees, including teachers and support staff are supported and developed so that they can achieve and deliver the best work they are able to. This policy is designed to encourage and maintain standards of performance, efficiency, and effectiveness in line with the school's objectives. There are 3 processes within this policy set out as follows:

ONE: INFORMAL CAPABILITY PROCESS

TWO: FORMAL CAPABILITY PROCESS

THREE: APPEAL PROCESS (at any formal stage where a formal warning has been issued)

- 1.2 This document sets out the Capability and Performance Improvement Policy for employees in schools and provides a procedure based on the Department for Education (DfE) model policy Part B Capability Procedure. This procedure applies only to employees about whose performance there are concerns, (see section 7 for what constitutes a performance matter below) that the appraisal process has been unable to address. It is important that every effort is made to follow a fair procedure at each stage in the capability and performance improvement process and this document sets out guidelines to ensure that this is the case.

## 2. SCOPE

- 2.1 Once adopted by the Governing Body, this Capability and Performance Improvement Policy and Procedure applies to all school-based employees within Maintained Schools.
- 2.2 This policy will **not apply** to schools where the council is not the legal employer of their staff e.g. Academies, Voluntary-aided schools and Foundation and Trust schools. However, the Governing Board may choose independently to adopt this policy with appropriate amendments.

Once adopted by the Governing Body, the Capability and Performance Improvement Policy applies to all employees with the exception of:

- Early career teachers where induction is more appropriate

- Employees on Bucks Pay Employment Conditions who are in their probationary period who should be managed under probationary guidelines

### **3. PRINCIPLES**

3.1 The policy contained within this document is founded on the following principles:

- a. That employees know what performance standards are expected of them.
- b. That performance standards are reasonable and achievable, taking into account the employees working hours, job descriptions and contractual terms.
- c. That the school will, wherever possible and appropriate, support managers and employees to improve unsatisfactory performance through the informal process outlined within this policy initially
- d. To provide appropriate development, training, and support to assist with the above.
- e. That it is understood that matters dealt with by way of the Capability and Performance Improvement Policy are different from instances of misconduct.
- f. Fairness and consistency – that employees have a right to be heard
- g. That matters are dealt with as quickly and reasonably as possible.
- h. If employees have any concerns about either the process or the teacher/manager leading it, they should contact the headteacher or a member of the Senior Leadership Team in the school so that their concerns can be addressed.
- i. Meetings recorded without the consent of all those present (covert recordings) are not permitted and will be treated as a conduct matter.
- j. No employee will be subjected to any form of discrimination in the application of this policy in relation to the protected characteristics of age, disability, gender, gender reassignment, marriage, and civil partnerships, maternity leave and pregnancy, race, religion or belief, sex, sexual orientation or other grounds protected by law.
- k. As a Data Controller, the Council processes personal data for the purposes of managing capability and performance matters. Such processing is necessary for compliance with a legal obligation to which we are subject and necessary for the purposes of carrying out obligations and exercising specific rights of the controller and of the data subject in the field of employment

### **4. ROLES AND RESPONSIBILITIES**

4.1 The Governing Body will have ultimate responsibility for the regulation of the performance of employees in the School, adopt an appropriate Capability and Performance Improvement Procedure, decide whether to collaborate with one or more other Governing Bodies/Trust

Boards in their arrangements for dismissal and delegate to the head teacher the authority to manage this process.

4.2 The Governing Body will set up three different committees:

- **A Warning Appeal Committee** – used when the employee appeals against any decision other than dismissal
- **A Staff Dismissal Committee** – set up to hear the final Stage 3 Hearing of the Capability and Performance Improvement Procedure in cases where the head teacher is not able to exercise their right to dismiss as they have been involved at an earlier stage and the potential outcome could be dismissal. The Staff Dismissal Committee is usually made up of 3 governors from the school and/or collaborating school. Where there is a Staff Dismissal Committee convened the head teacher may be called upon to present the capability findings to the Committee.
- **A Staff Dismissal Appeals Committee** – set up to hear appeals against decisions to dismiss. This is usually made up of 3 governors, not previously involved in the process, from the school and/or collaborating school.

4.3 The Governing Body will also notify the Director of Children's of any Capability and Performance Improvement meeting which could lead to dismissal and seek advice from HR about notification to the Secretary of State whenever a teacher is dismissed on the grounds of capability.

4.4 The Council will write to the Chair of the Governing Body if it has a concern about the performance of the head teacher (see Section 7 for further guidance on what constitutes a capability or performance matter) and will at the same time send a copy to the head teacher. The head teacher will be given an opportunity to make representations to the Chair of the Governing Body about the report and will have the right to be accompanied (see para. 6). The Chair of the Governing Body will write to the Corporate Director of Children's Services to inform them on the action they intend to take.

4.5 The head teacher has the authority to give formal written warnings or dismiss through this procedure. The head teacher should be advised by a Governor and an HR Representative before taking the decision to dismiss an employee. The head teacher will also identify those senior employees in School who have the authority to give formal written warnings.

**4.6 The head teacher and/or Chair of the Governing Body will:**

- a. Set and maintain clear and fair standards of performance at work
- b. Deal with poor performance as and when it arises and without delay
- c. Bring the Capability and Performance Improvement Policy to the attention of employees

- d. Monitor the process when the Capability and Performance Improvement Procedure is used in relation to any employee and report any action taken under the procedure as and when required by the council.

#### **4.7 Employees will:**

- a. Work with the head teacher and/or their line manager to resolve any problems which are identified in relation to their performance.
- b. Co-operate with any fact-finding enquiry by the school considering whether to invoke the Capability and Performance Improvement process
- c. Engage with any agreed Performance Improvement Plan (PIP) and any informal meeting under the Capability and Performance Improvement Policy, working towards any objectives and timescales set
- d. Co-operate with all reasonable management instruction whilst performance concerns are being managed.
- e. The employee must make every effort to attend any formal meetings as part of this process. There will be one attempt to rearrange a meeting where the employee or their representative cannot attend, with a warning that if there are any further delays, or the employee persistently fails to attend again, a decision may be made based on the available evidence and may include any written representations the employee has already submitted. Failure to attend a formal meeting without prior explanation, or good reason, may be treated as misconduct. For further guidance on this please contact HR.

#### **5. FAIR DISMISSAL PROCESS**

A dismissal by reason of capability will normally be considered fair if the employer has:

- a. Set reasonable standards of performance
- b. Made these clear to the employee in writing via the PIP
- c. Warned of the consequences of failing to meet them
- d. Given support, training, or both
- e. Given a reasonable amount of time for improvement
- f. Considered redeployment within the school and other alternatives to dismissal

And after all the above have been exhausted, the employee's performance is still deemed to be unsatisfactory.

## **6. RIGHT TO REPRESENTATION**

- 6.1 The employee has the right to be accompanied by their trade union representative or work colleague at any formal capability and performance review meeting. The employee will be advised to contact their union whenever the formal capability process is invoked.
- 6.2 If the employee's chosen trade union representative or work colleague is not available at the time proposed for the meeting, the meeting may be rearranged once to find a suitable time for the employee and representative to attend, ideally within 5 working days of the date originally proposed. The employee should inform the school immediately if they cannot attend a meeting.

## **7. WHAT CONSTITUTES A CAPABILITY/PERFORMANCE IMPROVEMENT MATTER?**

- 7.1 A performance issue arises when standards are not being satisfactorily met e.g. there are work concerns about an individual employee who is failing to carry out responsibilities or duties in a satisfactory manner and those shortcomings are due to the employee's skills or aptitude.
- 7.2 A performance concern may arise where:
- Where an employee's work performance is falling below an acceptable level
  - Where an employee cannot maintain acceptable standards of performance
- 7.3 Performance concerns may arise due to lack of professional awareness. It may also be due to an inability to cope with what is considered reasonable workloads or being unable to meet identified standards. It may also be an inability to prioritise work, insufficient training or difficulty in adapting to change. In all these cases there must be facts to support these concerns which clearly demonstrate that acceptable standards of performance in carrying out the employee's role are not being met.
- 7.4 For teachers, the Department for Education (DfE) provides advice on standards for teaching and for personal and professional conduct of teachers (a link to the latest standards can be found in the toolkit). Failure to meet these standards may result in this capability and performance improvement process being invoked.
- 7.5 For both teachers and Bucks Pay Employment Conditions, reference should be made to the job description, appraisals, performance standards set by the school and ongoing 1:1/supervision meetings.



7.6 Additionally, performance improvement or training needs may become apparent as part of a conduct and disciplinary process. In this instance the PIP may be used to highlight what improvements are needed and any timescales by which improvements are expected.

7.7 At any capability and performance improvement meeting the person conducting the meeting shall:

- Identify the areas for improvement e.g., which of the standards expected of teachers are not being met or where support staff are not meeting agreed objectives/standards. Written details shall be provided to the employee in the form of a PIP, see Appendix 1 & 2 in the Toolkit for guidance and pro forma.
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures. This may include the setting or reviewing of objectives specific to the areas of concern. See Appendix 1 & 2 in the Toolkit for detailed guidance.
- Explain and agree where possible, the support that will be available to help the employee improve their performance.
- Agree and set out the timetable for improvement and further monitoring and review. The review period should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for the employee to improve their performance.
- **Explain to the employee that if they are unable to meet the agreed performance improvement identified within the PIP by the agreed timescales this could ultimately lead to dismissal.**

## 8. FAST-TRACK PERFORMANCE IMPROVEMENT CASES

8.1 Particularly serious cases of incapability may be fast tracked. Cases suitable for the fast-track procedure are:

- Where an acceptable level of improvement is beyond the ability of the employee
- Where there is a lack of co-operation from the employee to engage with the PIP or process
- Where the employee is not engaging with the agreed methods to improve their performance
- Where the performance is compromising the education of children or having significant consequences in the running of the school and/or impact on colleagues

In the instances above, it may be appropriate to fast-track the case which allows for a shorter timescale i.e., around 4 weeks or less, depending on the seriousness of the performance concerns.

- 8.2 The fast-track procedure allows for entry at any level appropriate to the seriousness of the problem. Therefore, stages can be omitted but the employee must be given at least one warning before dismissal is considered, except in the case of gross negligence/incompetence which would be subject to the school's conduct and discipline policy.
- 8.3 Where an employee, recently subject to the capability and performance improvement policy, meets the standards required only to lapse within a period of 12 months, the procedure may re-commence at the stage it was left off.

## **9. INFORMAL PERFORMANCE IMPROVEMENT PROCESS**

### **9.1 Informal Performance Improvement Meeting**

The instigation of a capability procedure should not come as a surprise to the employee concerned; there needs to be clear evidence of sustained underperformance that the appraisal process has failed to address.

- 9.2 The manager will confirm the nature of the unsatisfactory performance, provide constructive advice on how performance can be improved, agree a timescale for improvement and advise of the consequence of not achieving this or sustaining it, i.e., the formal process may be instigated. It should be made clear to the employee that the appraisal process has stopped and that they are now being managed under the informal stage of the capability process.
- 9.3 The employee can offer an explanation and/or refute the alleged underperformance at this informal meeting and the manager can decide not to pursue the performance matter further. A copy of the policy must be given to the employee at the informal stage.
- 9.4 Meeting notes and a completed PIP, with clear objectives and realistic timescales, must be agreed and documented by the manager and shared with the employee within 5 working days of the meeting. The employee will need to agree and sign the PIP. See appendices 1 and 2 for a template PIP.
- 9.5 In the case of teachers, reference should be made to notes of supervision meetings or lesson observations where concerns have previously been highlighted and the employee should be provided with examples where their work has not met a satisfactory standard.

### **9.6 Informal Monitoring Period**

An informal performance monitoring and review period will follow the informal performance improvement meeting giving the employee the opportunity to achieve the performance standards set on the PIP.

#### **9.7 Informal Performance Improvement Review Meeting**

At the end of the timescale for improvement an informal review meeting should be held, and the manager will assess whether the employee has reached the agreed standard of performance. At this stage the manager will either:

1. Decide that the performance has improved to the required standard and revert to the appraisal process

Or

2. Put in further support and/or training for the employee and continue to manage under a PIP with another informal review

Or

3. If there is insufficient, or no improvement, the manager should consider progressing to the formal capability and performance improvement process

Where further support is identified (option 2) the manager and employee must agree the level of support required, in what format and how the performance is going to be reviewed and when. This needs to be captured in the PIP. If the performance is then not up to the standard required at the end of the review period it may be necessary to progress to the formal process. If the employee does not engage with the support offered, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

In some cases, where the concern is so significant, it may be acceptable to move straight to the formal process or fast-track process.

### **10. FORMAL PERFORMANCE IMPROVEMENT PROCESS**

#### **10.1 STAGE 1 – FORMAL PERFORMANCE IMPROVEMENT MEETING – Conducted by the Line Manager or equivalent**

Where there are ongoing concerns about an employee's performance that are unable to be resolved through the informal process, the formal process should be used as follows:

The employee must be formally invited to attend a Stage 1 Performance Improvement meeting as soon as is reasonably practicable providing them with at least 5 working days' notice. The employee will be informed in writing of the concerns over their performance, the reasons for those concerns, and the next stage if it is decided after the meeting that their

performance has been unsatisfactory. They will also be informed that they have the right to be accompanied (see Section 6 above and in toolkit for further information) and if any management witnesses are being called.

The employee will also be given a copy of any relevant documentation to be used at the stage 1 meeting, including any Performance Improvement Plan from the informal stage, at least 5 working days before.

The employee may submit any paperwork or witness statements for consideration at least 3 working days before the meeting. They may ask relevant witnesses to appear at the Stage 1 meeting, provided they give sufficient advance notice to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness.

The objective of the meeting is to establish the facts and any reasons for possible poor performance and agree any support that may be required. The line manager, conducting the meeting may conclude that:

- a. There are insufficient grounds for pursuing the capability issue or the employee has improved and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In this instance the capability and performance improvement process will come to an end.
- b. A Stage 1 meeting may be adjourned if the line manager needs to gather any further information or consider matters discussed at the meeting. The employee will be given a reasonable opportunity to consider any new information obtained before the Stage 1 meeting is reconvened.
- c. Where there are sufficient concerns regarding the employee's performance, agreement is reached on a performance improvement plan (PIP) or a revised PIP, if one has been in place from the informal stage, and a review period is set. See appendices 1&2 of the toolkit for a template PIP. The purpose of the PIP is to clearly set out and agree between parties some specific and measurable objectives and identify any training or support needed for the employee to achieve these objectives and maintain the standards required. Timescales for monitoring should be included in the PIP.

Minutes of the meeting should be taken, and a copy sent to the employee and their representative, along with the agreed PIP, within 5 working days of the meeting.

The employee must also be advised that if their performance does not meet the required standard within the timescales agreed in the PIP that their case may progress to Stage 2 of the formal process which may result in a final written warning.

## 10.2 STAGE 1 – FORMAL PERFORMANCE IMPROVEMENT MONITORING PERIOD – Conducted by the Line Manager or equivalent

A performance monitoring and review period will follow the capability meeting.

In the case of **non-teaching employees** formal monitoring, evaluation, guidance and support based on dialogue between the employee and their line manager will also be agreed for this period. It will have been recorded in a PIP (see Appendices 1 & 2 in the Toolkit).

In the case of **teachers**, lesson observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and their line manager will also be agreed for this period. It will have been recorded in a PIP (see Appendices 1 & 2 in the Toolkit).

The employee will be invited to a Formal Performance Improvement Review Meeting following the monitoring and review period.

## 10.3 STAGE 1 – FORMAL PERFORMANCE IMPROVEMENT REVIEW MEETING – Conducted by Line Manager or equivalent

The employee should be formally invited to attend the review meeting providing at least 5 working days' notice and will include copies of all relevant paperwork for discussion (see toolkit for further information on documents). The employee has the right to be accompanied (see section 6 above).

The Stage 1 review meeting will be conducted by the line manager, or equivalent, following the monitoring and review period. The manager may conclude:

- a. The employee has **reached the required standard of performance** and the process may be concluded at this stage. The performance improvement process will cease, and the appraisal process will restart.
- b. If the employee has made **some progress**, it may be appropriate for the line manager to extend the Stage 1 monitoring and review period and review again for further progress.
- c. If the employee's performance has **not reached the required standard**, a first written warning for 6 months will be issued to the employee and copied to their representative, within 5 working days of the Stage 1 Formal Performance Review meeting along with a copy of the notes of the meeting. It should notify the employee of their right to appeal within 10 working days of the date of the letter.

In the case of b and c above, the PIP should be reviewed between the manager and employee at this meeting, where possible, so that the monitoring period can commence.

#### **10.4 STAGE 2 - FORMAL PERFORMANCE IMPROVEMENT MONITORING PERIOD - Conducted by a Senior Manager or equivalent**

A performance monitoring and review period will follow immediately after the Stage 1 Formal Review Meeting that resulted in the issue of a first or final written warning. If the PIP has not been set at the formal improvement review meeting, this should be done as a matter of priority as the monitoring period can only commence when the PIP is agreed.

**In the case of non-teaching employees** formal monitoring, evaluation, guidance, and support based on dialogue between the employee and their line manager will again be agreed and continue during this period. Updates will be recorded on the PIP (see appendices 1 & 2 in the Toolkit)

**In the case of teachers**, lesson observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and their line manager will again be agreed and continue during this period. Updates will be recorded on the PIP (see appendices 1 & 2 in the Toolkit)

#### **10.5 STAGE 2 - FORMAL PERFORMANCE IMPROVEMENT REVIEW MEETING - Conducted by a Senior Manager or equivalent**

Following the stage 2 monitoring period, the employee will be invited to a formal performance improvement review meeting, to be conducted by a more senior manager than at Stage 1. At least 5 working days' notice in writing will be given. The employee will be informed in writing of the concerns over their performance, the reasons for those concerns, and the likely outcome if it is decided after the meeting that their performance has been unsatisfactory. The notification needs to contain sufficient information to enable the employee to prepare to answer the case and will include copies of any written evidence.

The employee has the right to be accompanied (see section 6 on right to be accompanied above).

The stage 2 review meeting will be for the senior manager to assess progress made against the PIP.

The senior manager may conclude:

- a. The employee has **reached the required standard of performance** and the process may be concluded at this stage. The performance improvement process will cease, and the appraisal process will restart.
- b. If the employee has made **some progress**, it may be appropriate for the line manager to extend the Stage 2 monitoring and review period and review again for further progress.
- c. If the employee's performance has **not reached the required standard**, a final written warning for 12 months will be issued to the employee and copied to their representative, within 5 working days of the Stage 2 Formal Performance Review meeting along with a copy of the notes of the meeting. It should notify the employee of their right to appeal within 10 working days of the date of the letter.

In the case of b and c above, the PIP should be reviewed between the manager and employee at this meeting, where possible, so that the monitoring period can commence.

#### **10.6 STAGE 3 - FORMAL PERFORMANCE IMPROVEMENT MONITORING PERIOD – Conducted by a Senior Manager or equivalent.**

A performance monitoring and review period will follow the Formal Review Meeting that resulted in the issue of a final written warning.

**In the case of non-teaching employees** formal monitoring, evaluation, guidance and support based on dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on the PIP (see appendices 1 & 2 in the Toolkit)

**In the case of teachers**, lesson observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and their line manager will again be agreed and continue during this period. It will be recorded on the PIP (see appendices 1 & 2 in the Toolkit)

The employee will be invited to a Stage 3 Final Performance Improvement Hearing Review following the monitoring and review period.

#### **10.7 STAGE 3 FINAL PERFORMANCE IMPROVEMENT HEARING – Conducted by head teacher (supported by HR and Governor) or Staff Dismissal Committee**

The Stage 3 Final Performance Improvement Hearing may be conducted by the headteacher, if they have not previously been involved, or the Staff Dismissal Committee (SDC). The employee must be advised at this stage that the hearing may lead to a dismissal.

Notification will include copies of evidence that have led up to the Stage 3 final performance improvement Hearing. The employee has a right to be accompanied by a work colleague or trade union representative.

The line manager may be called as a witness for the management case. The employee may also choose to bring witnesses and must advise at least 3 days prior to the hearing who they wish to bring and confirm their attendance.

At least 5 working days notice in writing will be given of the Stage 3 Final Performance Improvement Hearing.

The Headteacher or Staff Dismissal Committee may conclude that:

a. The employee has **reached the required standard of performance and/or** there are insufficient grounds to continue the process. The performance improvement process will cease, and the appraisal process will restart.

OR

b. That further investigation is needed and therefore Stage 3 Final Performance Improvement hearing is adjourned. The employee will then be required to attend a follow up Stage 3 hearing with the Headteacher, or the same Staff Dismissal Committee.

OR

c. If the employee has made **some progress** and the Headteacher/Staff Dismissal Committee are confident that more progress is likely, they may decide to extend the Stage 3 monitoring period. The employee will then be required to attend a follow up Stage 3 hearing with the Headteacher or same Staff Dismissal Committee.

OR

d. If the employee's performance has **not reached the required standard**, the employee will be dismissed on the grounds of capability due to continued unsatisfactory work performance. In this instance the employee will be entitled to be paid for their notice period and should be notified of their right to appeal within 10 working days of the date of the letter.



The decision will be confirmed in writing by the Headteacher/Staff Dismissal Committee within 5 working days of the date of the hearing. Notes of the hearing will be taken, and a copy sent to the employee and their representative.

## **11. ALTERNATIVES TO DISMISSAL**

Alternatives to dismissal should be considered where appropriate. These may include redeployment to another post within the school where possible, demotion within the same job, voluntary early retirement, or retirement on the grounds of efficiency. For further guidance please go to Section 11 in the Capability Toolkit.

## **12. APPEAL PROCESS**

If an employee wishes to appeal against any formal action taken against them under the above stages, they must do so in writing within 10 working days of written notification of the decision.

The appeal must be acknowledged by the manager/governor who is in receipt of the appeal letter and the Warning Appeal Panel or Staff Dismissal Appeal Committee must be convened without unreasonable delay.

Outcomes of the appeal could be that the panel:

- confirm the original decision.
- revoke the original decision; or
- substitute a different penalty provided it is not more severe in the case where a warning has been issued

For further guidance please go to Section 12 in the Capability Toolkit.

## **13. DEALING WITH ABSENCE**

Where absence may be an underlying cause of performance issues or a contributing factor, please seek further advice from Human Resources before progressing through the capability and performance improvement process. Reference may need to be made to the Health and Attendance policy alongside managing performance issues.

Please refer to Section 13 of the School's Capability Toolkit for guidance.

We process any personal data collected during the capability and performance improvement procedure in accordance with our [data protection policy](#). Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the capability and performance improvement procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with our data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under our disciplinary procedure.