



# **Rowlands Gill Primary School**

## **Formal Capability Policy & Procedure**

**Date: September 2017**

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## 1. Aim

- 1.1. Rowlands Gill Primary School is committed to ensuring that all employees are encouraged and supported to achieve and maintain acceptable standards of performance. The school seeks to provide a working environment which encourages employees to develop and maximise their potential and in the normal course of work most employees achieve and may exceed these standards.
- 1.2. There are occasions where the standards of performance are adversely affected by the actions of employees and fall below acceptable levels. The school recognises that these actions are not always due to misconduct or deliberate non-compliance with instructions, but due to the employee's lack of capability to perform the duties and responsibilities of their post effectively.
- 1.3. The aim of this policy is to help and encourage employees to achieve and maintain standards of performance and to provide the necessary improvement through the provision of reasonable structured help, advice, supervision, support and training.

## 2. Definition

- 2.1. Capability is the ability an employee has to perform their duties to standards that are acceptable to the school for the effective and efficient delivery of its educational services.

## 3. Scope

- 3.1. This policy applies to all employees appointed by the Governing Body of the school who have successfully completed a probationary or induction period. For those employees who are still within their probationary or induction period support will be provided via the probationary or induction processes.
- 3.2. **In this school, the Governing Body acts as an agent of Gateshead Council in undertaking the functions of the employer OR As this School is a Voluntary Aided/Foundation School, the Governing Body is the legal employer.**
- 3.3. The capability policy will:
  - maintain and improve the quality of education provided for students in this school by supporting employees to achieve and maintain accepted standards of performance;
  - effectively support employees whose performance does not meet acceptable standards;
  - establish reasons for unsatisfactory performance and provide reasonable structured help, advice, supervision, support and training;



- demonstrate to employees that the Governing Body is acting in the best interests of the school;
- be implemented in a fair, consistent and responsible way;
- be made available to all employees.

3.4. This policy applies when an employee's standard of performance falls below acceptable levels except in the following cases:

- where unsatisfactory performance is due to a single action or omission that has such a serious adverse effect that may amount to gross misconduct, in this situation the school's disciplinary policy and procedure will be followed;
- where wilful misconduct, insubordination or in exceptional cases, where the defect in performance jeopardises the health and safety of employees or students, in this situation the school's disciplinary policy and procedure will be followed; or
- where unsatisfactory levels of sickness absence are affecting performance, in this situation the school's sickness absence management policy and procedure will be followed.

#### **4. Responsibilities**

4.1. The Governing Body will:

- conduct this school with a view to promoting high standards of educational achievement;
- delegate authority to the Resources Committee to administer this policy and procedure on its behalf;
- abide by all relevant legislation and, in particular, will not discriminate on grounds of race, colour, ethnic origin, religion, belief, gender, marital status, sexual orientation, disability or age with regard to all decisions on performance;
- delegate to the head teacher/line manager/appraiser the management of any employee's performance;
- ensure the policy and procedure is applied consistently and fairly.

4.2. The head teacher/line manager/appraiser will:

- regularly and consistently communicate and demonstrate the expected standards of performance and behaviour;
- ensure the standards are realistic, measurable and relevant to the job;
- provide appropriate help and support to the employee to achieve and maintain the standards expected;
- identify reasons for any concern(s) and support the employee to establish a means of resolving them at the early intervention stage;
- monitor and assess progress towards targets in the employee's action plan;



- provide, in a timely manner, reasonable structured help, advice, supervision, support, and/or training to help the employee achieve and maintain the required standards;
- ensure where an employee fails to improve their performance there is sufficient evidence including documentation.

4.3. The employee will:

- work to achieve and maintain an acceptable standard of performance;
- seek and utilise opportunities that will develop and improve their skills base;
- attend meetings in line with the timescales within this procedure;
- raise any concerns in relation to the capability process as part of their response at any capability meeting or within two working days of any capability meeting.

**5. Review**

- 5.1. This Capability Policy and Procedure was agreed by the Governing Body of Rowlands Gill Primary School on ..... It will be reviewed when necessary to take account of changes to any relevant legislation and advice issued by the Council.



## **1. Introduction**

- 1.1. Performance problems will be identified during the appraisal period and will, wherever possible, be resolved with the early intervention of support from the appraiser via the school's appraisal policy thereby avoiding the need for commencing this procedure.
- 1.2. The formal capability procedure below will only be followed where the school's appraisal policy has determined that early intervention has not had a positive impact on the employee's standard of performance.
- 1.3. Those employees who are required to be registered by a national body in order to undertake their professional role will be made aware that should their performance not improve via this procedure they will be reported to their relevant national body.
- 1.4. When the school receives a reference request for any employee subject to this formal capability procedure, factual information regarding the employee's capabilities will be shared with the prospective employer.

## **2. Formal Capability Action**

- 2.1. The employee will be notified by their appraiser in writing, within 10 working days of the review meeting, that they have been referred to a formal capability meeting with the Resources Committee. The notification will inform the employee of:
  - the date and time of the meeting;
  - the location;
  - the capability concerns;
  - the right to be accompanied at the meeting by a trade union representative or work colleague;
  - all relevant evidence from the review meeting that is to be relied upon;
  - their potential dismissal, only if it is a possible outcome should the concerns not be improved upon;
  - the requirement to forward to the chair of the Finance and Staffing Committee conducting the meeting, any documents upon which they intend to rely on 2 working days prior to the date of the meeting.
- 2.2. The letter will be given to the employee and a copy enclosed for the employee's trade union representative or work colleague.
- 2.3. Unless the school and the employee agree otherwise, at least 5 working days' notice of the formal capability meeting will be given. If this date is not suitable for the employee or the trade union representative or work colleague they must offer an alternative date which is within 5 working days of the original date.



- 2.4. The formal capability meeting can take place in the absence of the employee and a decision will be made on the evidence available. Where an employee is unable to attend, they may nominate their trade union representative or work colleague to present their response to the concerns and any supporting documentation on their behalf. Alternatively the employee may submit their response in writing to the chair of this meeting.
- 2.5. The formal capability meeting will be held by the Resources Committee who will be advised by Human Resources and the same adviser as attended the early intervention review meeting. It will be the chair of the Committee's responsibility to explain the purpose of the meeting, identify those in attendance and how the meeting will be conducted.
- 2.6. At the formal capability meeting the appraiser will set out the continuing concerns in relation to the employee's performance using the documentary evidence provided. The employee and their representative, the Committee and/or the advisers will be able to ask questions of the appraiser.
- 2.7. The employee will then be given the opportunity to respond to the concerns raised. The employee and their representative can be questioned by the appraiser, the Committee and/or the advisers present.
- 2.8. Once all the information has been presented and examined, both parties will be given the opportunity to summarise their main points to ensure nothing has been missed. The employee will finally be asked if they have anything further to say.
- 2.9. The employee and their representative, and the appraiser will leave the meeting but usually will remain in school to await the decision which should be communicated to them orally. If it is not practicable for them to remain in school during the deliberations, then they may be asked to return to hear the decision at a later time or by telephone if requested.
- 2.10. The Committee, advised by Human Resources, will then decide in private whether capability action is justified and if so, what level of action will be applied. The level of action will be determined taking into account any mitigating factors presented.
- 2.11. Full and careful notes will be taken during the formal capability meeting and the Committee will identify a separate person to take the necessary notes to allow all parties to concentrate fully on the discussions.

### **3. Capability Action**

- 3.1. If the Committee determines that capability action is justified the employee will be advised of this, and the outcome and reasons will be confirmed in writing. The employee will also be advised of the right of appeal.



- 3.2. The following are the various levels of capability action. Their use will vary depending upon the employee's level of performance and the improvement shown. The school will normally progress through capability improvement note, final capability improvement note to dismissal with notice where there has been a failure to improve after the issuing of previous improvement notes.
- 3.3. The level of capability action does not have to be followed in strict order and there may be circumstances where an improvement note may need to be repeated and/or extended, or result in dismissal after an improvement note.
- 3.4. The employee will be given a reasonable timescale to achieve the required improvement, therefore an improvement note or final improvement note when implemented will be for a minimum of 6 weeks up to a maximum of 6 months depending on the circumstances of the employee and the level of improvement required. When setting the timescale, the Committee will give consideration to:
  - the nature of the role;
  - the support provided;
  - the early intervention plan.
- 3.5. There may be exceptional circumstances where a longer time period than 6 months is set due to, for example, the frequency of the work undertaken to meet a particular target.
- 3.6. If, at the conclusion of the formal capability meeting, it is decided that no formal capability action is to be taken, the employee will have this confirmed to them in writing and the employee will be returned to the normal appraisal process via the school's appraisal policy and procedure

#### Capability Improvement Note

- 3.7. When the Committee is not satisfied that the employee's performance has sufficiently improved the employee will receive a capability improvement note. A record of the note will be kept on the employee's personal file until the formal capability procedure concludes and used as the basis for monitoring and reviewing the employee's performance over the specified period.

#### Final Capability Improvement Note

- 3.8. If the employee currently has a capability improvement note regarding their performance then a final capability improvement note may be given. This may also be the decision where an employee's performance is deemed to be of such a serious nature that immediate improvement is required. A record of the final capability improvement note will be kept on the employee's personal file until the formal capability procedure concludes and used as the basis for monitoring and reviewing the employee's performance over the specified period.



### Alternative employment short of dismissal

- 3.9. Where it is determined that due to the employee's performance they cannot remain in their post and this would normally warrant dismissal, but for some mitigating factors, the Committee may consider alternative employment.
- 3.10. The alternative employment is dependent on a suitable alternative post being available immediately within the school that addresses the matters that currently prevent the employee attaining satisfactory performance. In addition the employee must agree to the transfer and have the necessary skills for the post (or be able to attain the skills with reasonable training).
- 3.11. Suitable alternative employment may include a post at a lower grade than the employee's current post. Protection arrangements do not apply where alternative employment is provided as an alternative to dismissal. If alternative employment is found, a final capability improvement note will also be issued.
- 3.12. If alternative employment is not possible then the employee will be dismissed.

### Dismissal with Notice or with Pay in Lieu of Notice

- 3.13. Where an employee currently has a final capability improvement note and there has been insufficient progress towards set targets or achieving the action plan they may be dismissed with notice or dismissed immediately with pay in lieu of their notice period depending on the particular circumstances on the grounds of capability.

## **4. Confirming Capability Action**

- 4.1. Following a decision to take any capability action, including dismissal, the employee will be informed in writing of the following:
  - the details of the concerns stating the grounds for and the level of action taken;
  - the improvement that is required (if applicable);
  - the duration of the capability action and its review date (if applicable);
  - that they may be liable to further capability action if their performance does not improve (if applicable);
  - that the review meeting can be brought forward if insufficient progress has been made (if applicable);
  - that the review meeting can be delayed if support is not provided as agreed;
  - where alternative employment is offered, the nature of this employment;
  - where dismissed, the dismissal date;
  - the right of appeal (see appendix one for the appeal processes).
- 4.2. The letter will be given to the employee or sent by recorded delivery and a copy enclosed for the employee's trade union representative or work colleague.



- 4.3. Where an employee is dismissed, a copy of the dismissal confirmation letter will be forwarded to the Council's Human Resources team. On behalf of the Director responsible for Human Resources, the team will provide the employee, in writing, with the notification of their dismissal from the school/the Council due to capability. This letter will also confirm the employee's notice periods.

## **5. Action Plan**

- 5.1. Following an employee being issued with a note, the appraiser will meet with the employee as soon as practicable to devise the capability action plan (see appendix 2 for an example). The employee has the right to be accompanied at this meeting by a trade union representative or work colleague.
- 5.2. The capability action plan will detail:
- the targets to be achieved;
  - the success criteria that will be used to evaluate achievement;
  - the assistance that will be provided to support improvement being achieved;
  - the mechanisms for monitoring performance during the specified period.
- 5.3. The appraiser and employee will seek to agree the capability action plan but, if that is not possible, the final decision on the setting of this will rest with the appraiser. If the capability action plan is not agreed the employee may record any comments in writing as an appendix to the plan.

## **6. Monitoring Improvement Notes**

- 6.1. Following an employee being issued with a note and a capability action plan, the appraiser will ensure that any support identified is given to the employee during the specified period.
- 6.2. The appraiser will undertake to monitor the employee during the specified period in order to assess whether the employee is achieving the targets for improved performance (see appendix three for an example).
- 6.3. The appraiser will maintain accurate records of the support given and the progress achieved. These records will be shared with the employee throughout the specified period.
- 6.4. If an employee is making insufficient progress towards the acceptable standards of performance during the specified period, the note's review meeting (see below) may be brought forward.



- 6.5. If the agreed support is not provided as agreed the note's review meeting (see below) can be delayed thus extending the note to allow time for the agreed support to be provided.

#### Improvement Note Review Meeting

- 6.6. At the end of the specified period, the Resources Committee will hold the improvement note review meeting with the employee. The employee will have the right to be accompanied at the meeting by their trade union representative or work colleague. The Committee will have the same advisers present as attended the formal capability meeting.
- 6.7. At the improvement note review meeting the appraiser will set out the employee's achievements towards completing the capability action plan, the monitoring that has taken place during the specified period and the overall outcome using the documentary evidence provided. The employee and their representative, the Committee and/or the advisers will be able to ask questions of the appraiser.
- 6.8. The employee and their representative will then be given the opportunity to respond. The employee and their representative can be questioned by the appraiser, the Committee and/or the advisers present.
- 6.9. At the end of the meeting the Committee will decide, in private with their advisers, whether the employee has:
- met the acceptable standards of performance;
  - made good progress towards the acceptable standards of performance; or
  - made insufficient progress towards or not met the acceptable standards of performance.
- 6.10. The employee and their representative, and the appraiser after leaving the meeting will usually remain in school to await the decision which should be communicated to them orally. If it is not practicable for them to remain in school, then the employee may be asked to return to hear the decision at a later time or by telephone if requested.
- 6.11. Where the employee meets the acceptable standards of performance the employee will be informed, in writing, that there is no further action, that the formal capability procedure has concluded and that their performance will be assessed in line with all other employees via the school's appraisal policy and procedure. All records will be removed from the employee's file due to the formal capability procedure ceasing.
- 6.12. Where the employee has made good progress but there is still a shortfall between acceptable and actual performance their improvement note will be extended and a further specified period set and confirmed in writing. This process will then be repeated.



6.13. Where the employee makes insufficient progress towards improvement, the Committee will determine what level of capability action will be taken; the actions from section 4 onwards will be repeated if appropriate.

## Appendix 1

### Right of Appeal

1. An employee has the right of appeal to the Appeal's Committee of the Governing Body. The letter of appeal must be sent to the chair of the Governing Body within 5 working days of receipt of the letter confirming the formal capability action taken (10 working days if an employee is dismissed). The employee must state in the letter the reason for the appeal.
2. Whilst the appeal is ongoing the capability action plan, if appropriate, will be suspended pending the outcome of the appeal.
3. The chair of the Governing Body will, within 5 working days of receipt, acknowledge the appeal letter and confirm arrangements for the meeting of the Appeal's Committee of the Governing Body. The Appeal's Committee will be made up of 3 or more Governors who have had no previous involvement in the capability process.
4. The employee will be informed of the date, time and location of the appeal and their right to be accompanied by a trade union representative or work colleague, and of the arrangements for exchange of documentation. If this date is not suitable for the employee or the trade union representative or work colleague they must offer an alternative date which is within 5 working days of the original date.
5. At least 3 working days prior to the appeal, all relevant documentary evidence to be used at the appeal by both parties, including, if applicable, a chronology of events, should be exchanged.
6. At the appeal, the chair of the Resources Committee will present the information, giving the background to and the reasons for the decision and include documentation as previously provided to the employee. The employee (or their trade union representative or work colleague) will have the opportunity to ask questions of the chair. Members of the Appeal's Committee and their advisers may also ask questions.
7. The employee (or their trade union representative or work colleague) will put forward their information, including documentation as previously provided for the Appeals Committee. The chair of the Resources Committee will have the opportunity to ask questions of the employee. Members of the Appeal's Committee and their advisers may also ask questions. The Chair of the Resources Committee and the employee (or their trade union representative or work colleague) will then sum up their presentations.
8. The chair of the Resources Committee, employee and their trade union representative or work colleague will then withdraw whilst the Appeal's Committee considers the information presented, assisted by Human Resources.
9. If the Appeal's Committee need to recall the chair of the Finance and Staffing Committee or the employee (or their trade union representative or work colleague)

## Appendix 1

to clarify matters on which they are uncertain, then both parties are to return notwithstanding only one may be required to comment on the point requiring clarification.

10. The decision of the Appeal's Committee should be given orally in the presence of both the employee (or their trade union representative or work colleague) and the chair of the Resources Committee, where practicable, and will be confirmed in writing.
11. The appeal is conducted as a review of the original decision. However in exceptional circumstances, where it is agreed that there has been some procedural irregularity or flaw in the process, the Appeal's Committee may consider any such representations and if thought appropriate, proceed with the case by way of a rehearing. The appeal will be reconvened at the earliest possible date thereafter.
12. If, after an appeal:
  - any formal capability action is reconsidered and a lower capability action is determined as more appropriate, the employee will be notified in writing of this decision and the formal capability procedure will continue;
  - any formal capability action is withdrawn, the employee will be notified in writing accordingly and the Appeal's Committee will confirm whether the employee will have performance managed via the school's appraisal policy and procedure or via an early intervention plan.
  - the decision to dismiss is confirmed the Governing Body must notify the employee and Council in writing of the decision to dismiss.

## Appendix 2

### Example Capability Action Plan

Name of Employee	
Name of Appraiser	
<b>Appraisal/Early Intervention</b>	
Date(s) of appraisal/appraisal review meetings	
Date(s) of observations	
Date(s) concerns raised	
Date early intervention plan implemented	
Date(s) early intervention plan monitored/reviewed	
Outcome of early intervention plan	
Date outcome of early intervention plan confirmed in writing	
<b>Capability Procedure</b>	
Date of formal capability meeting	
Outcome of formal capability meeting	
Date capability action plan implemented	

Date(s) capability action plan monitored/reviewed	
Date(s) of improvement note review meeting	

Areas for Improvement -

<b>Target</b>	<b>Action</b>	<b>Timescale</b>	<b>Support Identified</b>	<b>Success Criteria</b>	<b>Monitoring/Evaluation/Review</b>	<b>Outcome</b>
<i>What is the target? Reference teachers standards</i>	<i>Include all actions needed to achieve target</i>		<i>What? Who will complete? When will be happen?</i>	<i>What does successful achievement look like?</i>	<i>By who? When? How will it be evaluated? Include dates</i>	<i>Has the target been met or not? If partially met what? Include comments</i>