St Joseph the Worker
Catholic Primary School

Capability Procedure Policy

Mission Statement

With Jesus
We learn,
We care,
We listen
We share
so that He might be seen in the people that we are and the things that we do.

Date of Policy: Autumn 2026
Ratified by Governors: Autumn 2026
Review Date: Autumn 2027

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CHANGES:

2	Amendment to Scope – 2 years to 6 month in recognition to unfair dismissal protection under Employment Rights Act
5	Increase to meeting notice to employee and confirmation of companion
6, 8	Minor amendments and clarifications to terms
2025	No changes

1. Introduction

The minimum standard expected of all employees is the satisfactory performance of the tasks as set out in their job description, to the level set out in the person specification for that job and any standards applicable to the role e.g. Teaching Standards, HLTA Standards and the school's values and standards.

The performance of staff is monitored and managed on a day-to-day basis by line managers and through the Performance Management Procedure. The Capability Procedure sets out arrangements that will apply in serious cases where there have been persistent failures to meet job expectations, resulting in negative consequences on pupils and the organisation.

A summary of the procedures is set out at Appendix A.

2. Scope

This procedure is applicable to all staff (including the headteacher). In the case of staff with less than six month's service and on fixed term contracts, while the principles of reasonableness and natural justice reflected in these procedures and the ACAS Code of Practice on disciplinary and grievance matters will apply, it may be appropriate to foreshorten procedures, processes and relevant timescales in keeping with the particular nature of their employment.

2.1 Separate procedures apply to:

- Employees in a Probationary Period
- Misconduct cases
- Ill health cases

3. Roles and Responsibilities

3.1 It is the responsibility of the Governing Board to:

- Define and communicate procedures and to ensure that they are applied in a consistent manner.
- Ensure that systems are in place for the proper induction of new and promoted staff, and for day-to-day management and performance management of staff, to ensure that minor deficiencies in performance are dealt with effectively without recourse to the formal procedure.
- Appoint a member(s) to manage the process where the headteacher is the subject of the procedure.
- Establish where appropriate, capability/dismissal and appeals committees.

3.2 It is the responsibility of the headteacher and other managers to:

- Manage performance effectively, ensuring that staff are aware of the standards expected of them.
- Ensure that any minor deficiencies in conduct are dealt with at the earliest stage through normal day to day supervision and probation, induction and performance management procedures.
- Ensure that, where necessary, capability procedures are carried out promptly, fairly and equitably.
- Issue warnings and make initial dismissal decisions (headteacher only) where appropriate.

3.3 It is the responsibility of all staff to:

- Be aware of and comply with all general rules and procedures referred to in their contract, conditions of service, job description and any specific standards of performance related to their work and workplace.

- Comply fully with this procedure and to co-operate with the processes contained therein.

4. Representative

Employees have a statutory right to be accompanied at formal meetings and appeals by a trade union representative, an official employed by a trade union or work colleague. Trade union representatives who are not employed officials must have been certified by their union as being competent to accompany an employee. Requests to be accompanied must be clearly communicated by the employee. The request should be made in advance of the meeting providing the name of the companion and whether they are a fellow worker or trade union official or representative.

If an employee wishes to be accompanied by a person who is not a work colleague, an official employed by a trade union or trade union representative, they must seek permission from the employer in advance. All such requests will be given reasonable consideration and whether permission is granted will be entirely at the discretion of the employer.

Employees are responsible for making their own arrangements for their chosen companion to attend hearings. When considering their choice of companion, employees should bear in mind the practicalities of such arrangements and seek to identify a suitable, willing companion who is available to attend the hearing. All requests to be accompanied must be reasonable, which will depend on the circumstances of each individual case.

5. The Procedure

5.1 Identified concerns

Notification of a formal capability procedure should not come as a surprise to the employee concerned. Informal support and a performance improvement plan through Performance Management should mean that the employee is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment. Employees will be advised to contact their Union for additional support.

5.2 The formal procedure

In the most serious case, and/or where there has been insufficient or un-sustained improvement following a monitoring period, the performance management process will be suspended and the formal capability procedure will be invoked.

The employee will be called to a formal capability meeting. The meeting will be conducted by an appropriate manager. This will be the headteacher where there have been previous warnings and dismissal is therefore a possible outcome. Where the headteacher is the subject of the procedure the meeting will be conducted by a deputed governor.

5.2.1 The employee will be given at least seven working days' notice, in writing, of the date, time and place of the meeting. When given this notice, the employee will be:

- Informed of the nature and details of the concerns;
- Informed of their right to be accompanied at the meeting by a representative (see 4. above);
- Supplied with a copy of the evidence which is to be considered at the meeting;
- Given an indication of the possible penalty which could be imposed if the concerns are found to be substantiated (e.g. a formal warning or termination of employment by dismissal where previous warnings have been issued); and
- Informed who will be involved in the meeting including the name of any advisers.

5.2.2 Not later than three working days before the meeting the employee:

- Must supply the name and status of their representative; and

- May submit a written statement or other supporting written evidence if they wish, either directly or through their representative.

5.2.3 At the meeting the concerns will be explained to the employee and they will have the opportunity to make representations.

6. Outcomes

6.1 Where the concerns are substantiated the following decisions may be made:

- **Written warning (normally for one year) and a formal monitoring period:** where there is serious concern about the standard of performance or there has been insufficient or un-sustained progress following a period of monitoring.
- **Final written warning (normally for one year) and a formal monitoring period:** where the concerns are particularly serious or there has been insufficient progress following a previous warning or insufficient or un-sustained progress following a period of monitoring.
- **Dismissal with notice:** in the most serious cases and where there has been:
    - No progress following a previous warning; or
    - Insufficient progress following a final written warning.

Where the concerns are substantiated at a formal meeting, this will normally result in any pay increment due to the employee at the end of the relevant year, being withheld. This must be confirmed in line with the school's Pay Policy.

6.2 The outcome of the formal meeting will usually be notified at the end of the meeting, but in any case will be communicated in writing, within 5 working days.

6.3 Where a warning is determined, the employee will be informed of:

- The nature and seriousness of the concerns;
- The improvement in performance that is required during the formal monitoring period to remove them from the formal process (i.e. through set targets);
- The support that will be available to help the member of staff improve;
- The timescales for the formal monitoring period, which will be reasonable and proportionate taking account of the employees' personal circumstances and making reasonable adjustments as applicable.
- How performance will be monitored and reviewed during this period, including any review dates;
- Whether any pay progression due at the next pay review will be withheld;
- The consequences of failure to improve to the required standard; and

6.4 In the case of a formal warning or dismissal the employee will also be notified of their right of appeal.

6.5 In the case of dismissal, employees will normally be placed on paid leave for the period of notice, pending any appeal by them.

7. Appeals

An employee has the right of appeal against any warning/dismissal.

Notice of any appeal must be given in writing to the headteacher (chair of governors in the case of the headteacher) within five working days of receipt of the written notification by the employee of the outcome of the formal meeting, clearly stating the grounds upon which the appeal is made.

An appeal hearing will be convened as soon as practicable. Appeals will be heard by the headteacher, if they did not conduct the original meeting or by the governing board discipline/dismissal appeals committee in other cases and where the headteacher is the subject of the procedure. The decision of those hearing the appeal is final, subject to the employee's rights at law.

The procedures and conduct of appeals shall be the same as for formal meetings.

8. Records and Data Protection

Notes of formal meetings and appeal hearings will be taken and shared with the employee as soon as possible after the meeting/hearing. The employee has the right to challenge the accuracy of any minutes and to have these recorded.

Except as necessary as a reasonable adjustment, no-one may digitally record meetings or hearings, except for the clerk to assist with producing the minutes in which case permission will be sought from all parties.

Details of any formal action, including any warnings, will be retained on the employee's personal file in line with UK GDPR retention periods. Warnings will be disregarded after they have expired except:

- Details of any capability procedures and/or warnings within the preceding two years will be referred to when responding to an employee reference request.
- Details of any current capability procedures and/or warnings will be referred to when responding to an employee reference request.

A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an alternative person arranged by the school to take notes. The school processes any personal data collected during the capability procedure in accordance with its general data protection regulation policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the capability procedure.

On the conclusion of the procedure, data collected will be held in accordance with the school's UK GDPR retention schedule. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

9. Timing / location of meetings / hearings

Employers are obliged to deal with performance issues without any undue delay. It is expected that employees and their representatives will assist in this aim.

Employees and their representatives should make themselves available to attend meetings within a reasonable period of time. If however, the employees' chosen companion is not available, for a reason that was not reasonably unforeseeable, at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than five working days from the original date.

Where possible meetings and hearings will be held at a mutually convenient location, which meet any special needs of attendees and which may sometimes be away from the normal place of work or by virtual meeting where this is considered to be appropriate.

Reasonable time off with pay will be granted to employees who are acting as representative for an employee who is subject to the capability process.

10. Grievances raised during capability procedures

If a grievance is raised during the course of the capability procedure, which is related to the case, the grievance will normally be dealt with as part of the formal capability meeting/appeal. In other cases, the capability process may be temporarily suspended in order to deal with the grievance.

11. Ill health during capability procedures

While it is recognised that capability procedures can be distressing and may sometimes lead to an employee feeling unwell, the governing board believes that it is in everyone's best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

If sickness absence appears to have been triggered by the commencement of the capability procedure, the case will be referred immediately to an occupational health adviser to assess the employee's fitness for participation in the capability process. Where an employee remains off sick, the matter will subsequently be dealt with in accordance with the sickness absence procedure.

Appendix A – Summary Performance Concerns Procedures

