

## **HAVEN HIGH TECHNOLOGY COLLEGE**

### **EMPLOYEE CAPABILITY PROCEDURE**

#### **General**

The procedure gives the major role in managing the process to the Executive Headteacher including all formal action up to, and including dismissal. Clearly, a problem will arise if it is the Executive Headteacher's competence, which is the cause of concern. In general terms, where this occurs, the Chair of Governors will undertake the role defined for the Executive Headteacher in these procedures. However, this is not appropriate in all cases and in these circumstances Governors are advised to consult their named HR Adviser.

Also attached to assist schools in dealing with capability issues are:

Managing the process - **Appendix 1**

Sample letters to use during the process - **Appendix 2**

Capability Appeal Committee Meeting Procedure - **Appendix 3**

Capability Procedure (Flow Chart) - **Appendix 4**

Application of alternative arrangements – **Appendix 5**

The Executive Headteacher and governors are **strongly advised** to seek advice and support from relevant professionals and should consult their HR Adviser regarding any procedural issues. In particularly contentious cases, HR Advisers can also support the Executive Headteacher at formal meetings.

#### **Trade Union Officials**

Where formal action is being considered against a trade union official the case will be discussed with a full-time trade union officer/official in accordance with the ACAS Code of Practice. Advice in these cases will be sought from the HR Adviser.

### **CAPABILITY PROCEDURE**

#### **Introduction**

Where an employee may be under-performing the Executive Headteacher or other line manager should investigate and collect evidence. In circumstances where the Executive Headteacher's capability is in question the Chair of Governors must make arrangements for this to be done in consultation with the Local Authority.

The aims of the procedure are to:

- provide as much support as possible at the start of the procedure, reducing this over time so that the employee's capability can be improved against agreed targets
- provide regular monitoring of performance to help and encourage all employees to reach and maintain a high standard of performance

- ensure that a fair and consistent approach is adopted for dealing with employee performance issues

### **Informal Stage**

If an employee's capability is giving cause for concern then the Executive Headteacher or appropriate manager should arrange an informal discussion in order for those concerns to be expressed (see example letter 1).

Any issues raised by the employee should be taken into account before deciding on a particular course of action.

Targets should be agreed and a date set to review. This should be no more than about one term. Appropriate training and support must also be discussed and arrangements made as necessary.

It needs to be pointed out to the employee that if satisfactory improvement is not made then it may lead to formal capability procedures.

Notes of the discussions and targets should be kept and copied to the employee. These may be referred to in any subsequent formal stage.

At this stage it may become apparent that it is not a capability issue but is one of conduct in which case it should be dealt with under the disciplinary procedure.

### **Review**

At the review there will be four possible outcomes:

1. satisfactory improvement and no further action required
2. significant improvement made but extension of review period required
3. unsatisfactory improvement and formal targets set within the formal capability procedure
4. that it is a conduct issue to be dealt with under the disciplinary procedure

Prior to the review the employee should be written to (see sample letter 2).

### **First Formal Stage**

The first step in the formal process is a Formal Capability Meeting commencing at the review meeting.

The employee may be accompanied by a work colleague, workplace representative or their trade union representative but cannot be a qualified legal adviser or relative.

A HR Adviser or other person offering management support as appropriate may also accompany the Executive Headteacher/manager.

If following the informal stage there is unsatisfactory improvement then formal targets will be set with a date for review and the period will be for at least 4 working weeks. Support and training will again be agreed and provided as appropriate and will be confirmed in writing by the Executive Headteacher/manager.

The employee will also be given a copy of the capability procedure. Following this period the employee will be reminded of the review date with at least 5 school days' notice (see sample letter 3). Again both parties may be accompanied as appropriate.

### Review

At the review there will be three possible outcomes:

1. satisfactory review and no further action required
2. significant improvement made but extension of review period required
3. unsatisfactory review and progression to the second formal stage.

It is important that the Executive Headteacher attends this meeting if prior to the review it is felt that satisfactory improvement has not been made and that progression to the second stage is a likely outcome.

Where the Executive Headteacher decides to progress to the second stage he/she will inform the Chair of Governors before issuing the letter confirming the decision (see sample letter 4). In very serious cases the Executive Headteacher may consider progressing immediately to the third formal stage.

The decision will remain 'live' for a set period of time (see Guidance Notes) and therefore if satisfactory improvement proves only to be of a temporary nature then the Executive Headteacher has the option of returning immediately to this point in the procedure.

Attached to the letter will be the targets that are to be met, the level of support that will be provided and the timescale in which improvement needs to be achieved. This needs to be period of at least 4 working weeks. A date for review will also be included.

### **Second Formal Stage**

The second formal stage will commence at the review meeting.

Again, there will be three possible outcomes:

1. satisfactory review and no further action required
2. significant improvement made but extension of review period required
3. unsatisfactory review and progression to the third formal stage.

Where the Executive Headteacher decides to progress to the third formal stage he/she will inform the Chair of Governors before issuing the letter confirming the decision (see sample letter 4).

The letter will include specific targets and the level of support that will be provided and will state that, if targets are not met, there is the possibility of dismissal. A date for review will be set with a minimum period of 4 weeks.

### **Third Formal Stage\***

The third formal stage will commence at the review meeting.

Again, there will be three possible outcomes:

1. satisfactory review and no further action required
2. significant improvement made but extension of review period required
3. dismissal on the grounds of capability

If the decision is one of dismissal it will be communicated to the employee orally immediately after it has been reached and will then be confirmed in writing. The letter confirming the initial dismissal decision will inform the employee that he/she can appeal against the decision to a committee of the Governors.

*Following any initial dismissal determination, notification of the decision must be sent to the Authority who will within 14 days issue a termination of the employment letter. If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded. See sample letter 5a.*

The employee will be given ten working days from the announcement of the decision to lodge an appeal with the Clerk to the Governors. The letter from the employee **must** set out the basis for any appeal (see i to iv below). The employee will be given a least one working week's notice of the date of an appeal hearing.

The appeal process will consider disciplinary decisions on one or more of the following grounds:

- i. The procedure: the procedure was not followed.
- ii. The decision: the conclusions of the Executive Headteacher/Disciplinary Committee were unreasonable.
- iii. The penalty: the penalty is considered to be too harsh.
- iv. There is relevant new evidence.

***\* If alternative arrangements have been made then the review meeting will be replaced by a formal capability hearing before a committee of governors with the procedure the same as that of an Appeal Hearing. The employee will still have the right of appeal to the Capability Appeal Committee.***

### **Capability Appeal Meeting**

The Capability Appeal Committee must be a properly constituted committee of Governors. Members of the committee will be untainted by earlier proceedings. The committee will normally be made up of three Governors, one of whom will be nominated as Chair.

A HR Adviser on matters of procedure will advise the committee. The HR Adviser will also be able to participate in the meeting but the decision regarding the action to be taken will be taken by the committee members only although the HR Adviser will be present throughout their deliberations in an advisory capacity.

The committee will have the option of two courses of action:

1. to uphold the decision of the Executive Headteacher  
or

2. to refer the matter back to the Executive Headteacher for further action and may include specific recommendations made by the committee. Notice from the Authority or college will be rescinded.

## **Appendix 1**

### **MANAGING THE PROCESS**

All staff with any supervisory responsibilities should ensure that employees understand the standards of work that are expected of them and need to identify as soon as possible any potential problems.

With appropriate support and training most capability issues should not get beyond the informal stage of the process.

An employee should be given full opportunity to respond to any issues raised and to give reasons that may be affecting his/her performance at work. All circumstances should be taken into account before proceeding further.

The employee should be supported to improve or resolve the situation as soon as it becomes apparent. This may be done purely through counselling discussion with the objective of encouragement and help.

Where a programme of additional support is being considered the following suggestions may be of help:

- in-service training
- work observation by suitably experienced person (either from the college or external)
- modified timetable or workload for specified period
- assistance with planning and work content
- work-sharing with more experienced person
- visits to other schools to observe good practice
- regular meetings with a mentor within the college

The above is not exhaustive and will apply to both teaching and support staff as appropriate.

At this stage it should become clear whether or not it is a capability issue or one of conduct whereby the employee is capable of carrying out his/her duties but for some reason has chosen not to.

Where targets for improvement are set they should be clearly defined with appropriate timescales. They should be revised as necessary and where possible agreed between

the two parties. Targets should be SMART i.e. Specific, Measurable, Attainable, Reasonable and Time-limited.

It is **strongly advised** that independent input is also provided through the use of an educational specialist such as the college's Link Adviser and/or appropriate consultant from the School Improvement Service.

Meetings between Executive Headteacher/managers and employees are strictly confidential to those attending and should normally be held within the employee's normal working hours.

The complete history and background of a capability case may be requested at an appeal hearing or at an employment tribunal. It is therefore essential that comprehensive records be made of any level of capability action. The note taker will be either the college's Clerk to Governors or an appropriate member of the administration team. These notes will not be verbatim.

Full records of discussions including targets and timescales set must be kept and shared with the individual concerned.

Where satisfactory improvement has been made the decision will remain 'live' for a period of up to one year. If, subsequently there is deterioration in performance the Executive Headteacher/manager can return to that point in the procedure within the agreed timescale.

### **3. SICKNESS ABSENCE DURING THE PROCEDURE**

Absence which is triggered by the capability procedure, and the Executive Headteacher/manager believes is likely to be long term should be referred immediately to the Occupational Health Adviser for an assessment regarding the individual's fitness for work. The process will be the same as for any other medical referral. Short absences should not delay any part of the formal stages of the procedure.

### **4. CONDITIONS OF SERVICE**

Conditions of Service are not affected by the application of the capability procedures although consideration should be given as to whether an employee should progress up the pay spine when their capability is in question. The conditions of service for both teaching and support staff allow for the withholding of increments where service has been unsatisfactory. It is strongly advised, however that this is not considered until the individual is within the second formal stage of the procedure.

### **5. EMPLOYEE REPRESENTATION**

During each stage of the formal procedure an employee is entitled to be accompanied by a work colleague, workplace representative or their trade union representative but cannot be a qualified legal adviser or relative.

If an employee's chosen companion is unavailable to attend the meeting at the time specified by the college, but proposes an alternative time and date, the meeting must be postponed until the later date provided that the latter is within 5 working days of the

original. If this is not practicable then the Executive Headteacher/Governors should arrange a suitable alternative.

Meetings or appeal hearings will not normally be held during periods of college closure.

## **6. ROLE OF GOVERNORS**

Governors should not normally be involved with the capability procedure before an appeal hearing following the dismissal of an individual. Where it is Executive Headteacher's capability that is in question the Chair of Governors or other appropriate Governor will assume the role of the manager.

Governing bodies need to ensure that they have a properly established capability appeal committee, the members of which are untainted by earlier proceedings. It is advised that the committee would not normally include staff governors.

The Chair of Governors should be kept informed of the progress of any case but not be given the details in case he/she is involved later at the appeal stage.

Where dismissal is being considered the Executive Headteacher will normally take the decision unless certain circumstances apply. See Appendix 5.

## **7. ROLE OF THE LOCAL AUTHORITY**

The LA has advisory rights as regards all proceedings of a governing body of all community, voluntary controlled, community special and maintained nursery schools where potentially a dismissal may take place. This will normally be done through the HR Adviser as a representative of the Authority and will include governors' appeal hearings.

This also applies to foundation, voluntary aided, and foundation special schools where the governing body have accorded the Authority those rights of attendance and giving advice.

The dismissal of an employee could be the subject of an appeal to an employment tribunal, which may involve costs being awarded against the college and the Authority who will have been named as co-respondents. Costs will not normally be met from a school's budget share unless the Authority has good reason to deduct the costs or part of those costs. The potentially unfair or unlawful dismissal of an employee however, may be such a reason.

Where an employee has been dismissed on the grounds of capability the Authority will consider the facts of the case and decide whether or not in future the individual would be considered to be suitable to be placed on its supply teaching or relief staff panels. This will also be the case where an employee has resigned at a point in the procedure where dismissal was a likely outcome.

In the case of teaching staff the matter will also be referred, by the employer, to the General Teaching Council (England) for consideration under its own disciplinary procedures.

## **Appendix 2**

### **Sample Letters**

#### ***Sample Letter 1 sent by Executive Headteacher/Manager to the employee.***

Dear \_\_\_\_\_

#### **INFORMAL CAPABILITY MEETING**

I am writing to inform you that I have concerns in respect of your capability as \_\_\_\_\_ at this college.

In order to address these concerns I am writing to invite you to a meeting at \_\_\_\_\_(time) on \_\_\_\_\_ (date) to be held in \_\_\_\_\_ (place).

The aim of the meeting is to discuss my concerns and to agree with you a plan of action in order for you to achieve the required standard of performance. This will include an appropriate timescale with a future date for review.

This will be an informal meeting with the intention of finding a constructive way forward.

Yours sincerely

#### ***Sample Letter 2 sent by Executive Headteacher/Manager to the employee.***

Dear \_\_\_\_\_

#### **CAPABILITY MEETING**

I am writing to remind you that we agreed to a future review meeting regarding the concerns that I had in respect of your capability.

During the past \_\_\_\_\_ weeks I have been monitoring your performance and need to discuss these issues with you. I am therefore inviting you to a meeting at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) in \_\_\_\_\_(place). Also present at the meeting will be \_\_\_\_\_

You may be accompanied to the meeting by a work colleague, workplace representative or trade union representative but cannot be a qualified legal adviser or relative.

Yours sincerely

**Sample letter 3 sent by the Executive Headteacher to the employee**

Dear \_\_\_\_\_

**FORMAL CAPABILITY MEETING**

Following the period of monitoring your capability I am writing to invite you to a formal meeting at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) in \_\_\_\_\_(place). Also present at the meeting will be \_\_\_\_\_

At the meeting a review will take place regarding the targets that have been set and need to inform you that during the course of the meeting I may consider moving the matter into the second/third formal stage of the procedure.

You may be accompanied to the meeting by a work colleague, workplace representative or trade union representative but cannot be a qualified legal adviser or relative.

Yours sincerely

Executive Headteacher

**Sample letter 4 sent by Executive Headteacher to the employee**

Dear \_\_\_\_\_

**CAPABILITY ISSUE –SECOND/FINAL REVIEW (Delete as appropriate)**

Following the formal meeting held on \_\_\_\_\_(date) attended by \_\_\_\_\_(names) I am writing to confirm my decision to progress to the second/ final (delete as appropriate) formal stage of the procedure and to inform you that your capability as \_\_\_\_\_ at this college must improve to an acceptable and sustained standard.

I need to point out that failure to improve may result in your dismissal from this college. (Insert if progressing to final stage).

Please find attached the targets that have been set in order for you to improve including the timescale for this and support that will be provided.

Yours sincerely

Executive Headteacher

**Sample letter 5a sent by the Executive Headteacher to the employee following dismissal decision– Community, voluntary controlled, community special and maintained nursery schools.**

Dear \_\_\_\_\_

**CAPABILITY ISSUE – FINAL REVIEW**

Following your final review I am writing to confirm my decision to dismiss you on the grounds of your lack of capability as \_\_\_\_\_ at this school.

I have forwarded a copy of this letter to the Director of Children's Services to formally request that your employment be terminated on these grounds with effect from \_\_\_\_\_.

You have the right to appeal against this decision to a committee of governors and if you wish to exercise this right you should do so in writing, setting out your grounds of appeal to the Clerk to Governors within 10 working days of the announcement of the decision. The appropriate arrangements will then be made.

Yours sincerely

Executive Headteacher

### **Appendix 3**

#### **Capability Appeal Committee Meeting Procedure**

1. Executive Headteacher (or representative), employee and representative enter together.
2. Chairman of the Committee describes the procedure. Any procedural questions are resolved at this point.
3. Employee or representative makes statement (witnesses may be called).
4. Executive Headteacher questions employee/representative (and witnesses) on statement(s).
5. Members of the Committee question employee and/or representative (and witnesses) on statement(s).
6. Executive Headteacher makes statement in respect of the concerns about the employee's capability and the procedure that has been followed. (Witnesses may be called).
7. Employee and representative question Executive Headteacher (and witnesses) on statement(s).
8. Members of the Committee and HR Adviser question Executive Headteacher (and witnesses) on statement(s).
9. Employee or representative summarises and concludes.
10. Executive Headteacher summarises and concludes.
11. Executive Headteacher, employee and representative withdraw whilst the Committee, advised by the HR Adviser considers the appeal.
12. Executive Headteacher, employee and representative return and decision of the Committee is announced.

## **Appendix 4**

### **CAPABILITY PROCEDURE FLOW CHART**

#### **Informal stage**

Concerns raised by Executive Headteacher/manager



Targets agreed and support provided.



Review period set (up to one term)



Review of performance against targets



#### **First formal stage**

If no improvement re-set targets and provide support



Review period set (at least 4 weeks)



Review of performance against targets



If insufficient improvement progress to second formal stage



#### **Second formal stage**

Re-set targets and provide support



Review period set (at least 4 weeks)



Review of performance against targets



If insufficient improvement progress to third formal stage



#### **Third formal stage**

Re-set targets and provide support



Review period set (at least 4 weeks)



Review of performance against targets



If insufficient improvement dismissal from the college by the Authority or college ↓

#### **Capability Appeal hearing**



Initial dismissal decision upheld or notice rescinded

## ***Appendix 5***

### **CAPABILITY PROCEDURE - ALTERNATIVE ARRANGEMENTS**

The Executive Headteacher will normally be expected to lead in determining staff dismissals including those where the reason is capability.

The capability procedure therefore delegates this responsibility to the Executive Headteacher although in certain circumstances in accordance with the provisions of the Education Act 2003 the governing body should apply alternative arrangements if the process reaches the potential dismissal stage.

These arrangements may include decisions being taken by an individual governor or a group of governors with or without the Executive Headteacher. Regardless of the approach adopted the Executive Headteacher has the right to attend to offer advice.

The circumstances are as follows:

- An Executive Headteacher who is unwilling to perform these functions and whose previous history of service at the college did not include any such responsibilities.
- An Executive Headteacher subject to suspension, disciplinary procedures (including capability), or disciplinary action.
- Where the LA has made representations to the chair of the governing body on grounds of serious concerns about the performance of the Executive Headteacher.
- Where the Executive Headteacher has failed to abide by financial limits agreed by the governing body for any school purpose.
- Where the governing body of a faith school has agreed staffing policies, which provide for governor involvement in the interests of preserving the college's religious character.

Where any of the above circumstances apply schools are strongly advised to consult the HR Manager for Children's Services and/or your HR Adviser.

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