



ST THOMAS MORE CATHOLIC PRIMARY SCHOOL

Capability Policy & Procedure

MISSION STATEMENT

I have come so that they may have life and have it to the full - John 10:10

As a Catholic school, God is at the heart of all we do. We believe that each person is made in His image, deserving to be treated with respect and dignity.

Showing respect, love and care for everyone and everything, we aim to develop harmony between pupils, parents, the school and Parish and grow as a Christian community.

We aim to embed the virtues in every child to believe in themselves to be the best that they can be and leave school as well-rounded individuals who care about themselves, others, and the world.

This policy must be read in conjunction with the
Safeguarding and Child Protection Policy and the Sickness and Absence Policy

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1. DEFINITIONS

- 1.1 The term "Head Teacher" also refers, where appropriate, to any other title used to identify the same.
- 1.2 The term "employee" refers to any member of the School staff employed to work at the School or under the guidance of the School.
- 1.3 The term "senior manager" refers to any member of the School Leadership Team. It also includes consultants at the same level. A senior manager may only decide to issue a sanction up to and including a final written warning.
- 1.4 If the Head Teacher, following consultation with the Chair of Governors, considers that there is no senior manager to whom s/he can reasonably delegate a specific capability matter, then the Head Teacher will take the role of the senior manager for that specific case and the role of the "Head Teacher" under this procedure will be performed by a "Disciplinary Committee" of the Local Governing Committee consisting of not less than three governors, (except in circumstances provided for in the Secretary of State's guidance on the Staffing Regulations), none of whom will have had previous involvement in the case.
- 1.5 The role of the Head Teacher will be taken by appropriate governors as indicated where capability being reviewed is that of the Head Teacher.
- 1.6 Capability due to a lack of competence means a lack of skill or aptitude leading to unsatisfactory performance. "Lack of capability" is defined as a situation in which an employee fails consistently to perform his/her duties to a wholly satisfactory standard of performance over a period.
- 1.7 'Companion' means a willing work colleague not involved in the substance of the employee's performance issues under review by this Capability Policy and Procedure, or an accredited trade union representative or an official employed by a trade union who will be expected to make themselves available for the periods of time necessary to meet timescales under this Capability Policy and Procedure.

2. PURPOSE

This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation. We may also vary any parts of this procedure, including any time limits, as appropriate in any case within a judgement of reasonableness.

3. PERFORMANCE FEEDBACK

- 3.1 Where there are concerns about any aspects of the employee's performance the appraiser, line manager or another senior member of staff will meet with the employee to:
 - share the areas of concern;

- give the employee the opportunity to comment and discuss the concerns and establish the likely causes of poor performance and identify any reasonable training needs/support needed (e.g. coaching, monitoring, structured observation) through Performance Management;
 - if medical issues are raised, medical evidence can be requested by the school;
 - clarify the required standards and agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
 - make clear how, and by when progress will be reviewed;
 - consider the revising of objectives or adding additional ones;
 - explain the implications and process if no, or insufficient, improvement is made.
- 3.2 The employee may be given an informal verbal warning as a result of an appraisal meeting or other informal discussion about performance. A note of the informal verbal warning will be placed on the employee's personnel file and the employee will be advised of this. The nature of the shortfall or failure and the likely consequences of a failure to improve will be explained to the employee.
- 3.3 An informal verbal warning will be kept on the employee's personnel record but will be considered expired after 12 months if the matter is adequately dealt with.
- 3.4 A formal warning under the formal procedure will never result directly from a routine appraisal meeting or other informal discussion about the employee's performance. However, as noted below, the formal procedure may be invoked as a result of such a meeting and a formal warning may result from that.
- 3.5 In the light of any concerns if it is considered that the employee has made, or is making sufficient improvement, the normal appraisal process will continue, with any remaining issues continuing to be addressed through that process.
- 3.6 A Support Plan will be implemented at this stage and regular reviews made to support the employee in reaching the standards required.

4. FORMAL CAPABILITY HEARING

- 4.1 This procedure applies where performance of an employee is giving rise to serious concerns. If an employee's performance is not wholly satisfactory, the senior manager will invite the employee to a formal capability hearing to discuss with the employee the identified poor performance as specifically as possible.
- 4.2 Where the concerns relate to an alleged act of serious or gross negligence, the employee may be suspended from work, on full pay and benefits, pending the outcome of the investigation into the alleged offence. Any period of suspension will be kept to a minimum and will normally not exceed 14 days.
- 4.3 The senior manager will write to the employee at least 5 working days in advance of the Formal Capability Hearing to inform him/her about:

- a) the date, time and place of the meeting.
 - b) the basic details of the concerns about the employee's performance.
 - c) the employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice.
 - d) the titles of enclosed copies of any documents to be used at the meeting.
 - e) names of any witnesses to be called.
 - f) his/her right to call witnesses on his/her behalf.
 - g) The name and office of any adviser who will accompany the senior manager at the meeting.
- 4.4 This hearing is intended to establish the facts. It will be conducted by a senior manager delegated by the Head Teacher (or the Chair of Governors for Head Teacher). The hearing will allow the employee to respond to concerns about his/her performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 4.5 If the employee or his/her companion cannot attend the hearing they must inform the senior manager (or the Chair of Governors for the Head Teacher) immediately and an alternative time will usually be arranged. Every effort to attend the scheduled hearing must be made. Further absence (after one occasion) may result in the decision being made that the hearing will go ahead despite the absence of the employee.
- 4.6 The senior manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 4.7 The senior manager may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue.
- 4.8 During the hearing, or any other meeting which could lead to a formal warning being issued, the senior manager will:
- Set out the required standards that it is believed the employee has failed to meet, and consider any relevant evidence gathered;
 - Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;
 - Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
 - Where appropriate discuss the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria that are

appropriate and the evidence that will be used to assess, whether or not the necessary improvement has been made;

- Identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals;
- Where appropriate, set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be reasonable and proportionate, between four and ten weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved;
- warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal;
- inform the employee of the right of appeal;
- agree with the employee and any companion the date of any subsequent review meeting.

4.9 Notes will be taken of any formal hearing and a copy sent to the employee and their companion. Following the hearing, the senior manager will write to confirm the decision. The employee has the right to appeal the decision and information of how to do that will be provided to the employee. The following outcomes may arise as a result of a formal hearing but, depending on the seriousness of the matter and all the circumstances, any of the below stages may be omitted:

Written Warning

In the case of serious shortfall or failure, or a repetition of earlier shortfall or failure, the employee will be given a written warning, setting out the precise nature of the shortfall or failure, the likely consequences of further shortfall or failure and specifying, if appropriate, the improvement required and over what period. Objectives, timescales and measures for the performance improvement should be set. The senior manager should offer help with training and supervision as required. A written warning will be kept on the employee's personnel record but will be considered expired after 12 months. The employee's performance may be appraised, at intervals to be determined by the senior manager, at any time during this period.

Final Written Warning

In the case of a further repetition of earlier shortfall or failure, if the employee still fails to improve or if the shortfall or failure, whilst falling short of gross negligence, is serious enough to warrant only one written warning, you will be given a final written warning setting out the precise nature of the shortfall or failure containing a statement that any recurrence or failure to improve will lead to dismissal or whatever other penalty is considered appropriate and specifying, if appropriate, the improvement required and over what period. A final written warning will be kept on the employee's personnel record but will be considered expired after

12 months. Objectives, timescales and measures for the performance improvement should be set. The senior manager should offer help with training and supervision as required. Conduct and performance will be appraised, at intervals to be determined by the senior manager, at any time during this period.

Dismissal

In the case of gross negligence, or if all the appropriate stages of the warning procedure have been exhausted, the employee will normally be dismissed. The governors reserve the right to consider other possible disciplinary action, including (but without limitation): demotion or transfer; loss of seniority or salary increment; suspension (without pay). If you are dismissed, you will be provided with a written statement detailing the reasons for dismissal, the date on which employment will terminate and the right of appeal.

If the concerns raised as part of the formal capability process relate to a lack of capability that poses a risk to the health, safety or well-being of children, or is likely to result in serious damage to students' education, shorter timescales for improvement may be appropriate. Depending on the seriousness of the matter and all the circumstances, the senior manager may decide to omit any of the stages detailed above or issue an alternative sanction.

5. SICKNESS ABSENCE AND THE USE OF THIS PROCEDURE

- 5.1 Prolonged or intermittent sickness absence may necessitate the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the school. Along with this is the failure to follow the schools sickness and absence policy. This may also lead to formal capability procedures. This may include not following school policy and procedures on more than one occasions despite the policy being shared and explained through induction and back to work meetings.
- 5.2 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health.
- 5.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting, and no reasonable adjustments can be made to facilitate his/her attendance, she/ he may present a written submission for consideration and/or be represented by a companion in her/his absence.

6. MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING

A performance monitoring and review period will follow the formal capability hearing. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a Formal Review Hearing (see Paragraph 4 above), unless she/ he had been issued with a final written warning, in which case s/he will be invited to a decision meeting (see Paragraph 7 below).

7. FORMAL REVIEW MEETING

- 7.1 At least 5 working days before the date for the formal review meeting a written reminder will be given to the employee together with details of the meeting.
- 7.2 The formal review hearing will follow a similar procedure to that identified for the formal capability meeting.
- 7.3 If the senior manager (Chair of Governors for the Head Teacher) is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease, and the appraisal process will re-start.
- 7.4 In cases:
 - where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
 - where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.
- 7.5 Notes will be taken at the Formal Review Meeting and a copy will be sent to the employee and any companion.
- 7.6 Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning.
- 7.7 At this stage, rather than refer the matter to a further hearing, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post more suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply with no safeguarding.

8. RIGHT OF APPEAL

- 8.1 If an employee feels that a decision under the formal procedure is wrong or unjust, she/ he may appeal in writing against the decision. Where that decision is dismissal the employee should refer to section 10 below.
- 8.2 Appeals against any decision shall be restricted to the reasonableness of the decision made, any relevant new evidence not previously available or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within 10 working days of the decision having been received.

- 8.3 All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.
- 8.4 The appeal will be heard by the Appeals Panel of Governors. The number of governors on the Appeals Panel of Governors will not be less than two. The panel may be advised by a person engaged for the purpose by the Local Governing Committee. The panel can: confirm the decision, reduce the severity of a decision, or cancel the decision. The employee will be informed in writing of the results of the appeal hearing within 5 days.
- 8.5 The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for the formal capability and review hearings and, as with those meetings, notes will be taken, and a copy sent to the employee and any companion.
- 8.6 Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

9. FINAL HEARING

- 9.1 At least 5 working days before the date of the final hearing a reminder will be given in writing together with details of the meeting. The meeting will be conducted by the Head Teacher (Governor Panel for the Head Teacher).
- 9.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start.
- 9.3 If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short-specified assessment period.
- 9.4 If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

10. RIGHT OF APPEAL AGAINST A DECISION TO DISMISS

- 10.1 The employee has a right of appeal to the Appeals Committee of the Local Governing Committee against a decision to dismiss.
- 10.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any previous involvement in the case.
- 10.3 The employee's notice of appeal should be sent to the Clerk to the Governors within 5 working days of receipt of the written decision to dismiss, setting out the grounds of appeal.

10.4 Appeal hearings should be held as soon as possible after receipt of the appeal and will be conducted in the same way as appeals referred to in Paragraph 7 above.

11. NOTICE OF DISMISSAL

11.1 Following a decision to dismiss, the Local Governing Committee will notify the employee in writing that the employee is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Head Teacher (or Disciplinary Committee).

11.2 In the event that the Appeals Committee of the Governors decides not to uphold the decision to dismiss the employee shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

12. GRIEVANCES ARISING DURING THE PROCEDURE

Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out at Paragraph 8 above.

13. TRADE UNION OFFICIALS

Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

14. CONFIDENTIALITY

14.1 The aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

14.2 The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under the school's disciplinary policy.

To be read in conjunction with the Equal Opportunities (Staff) Policy and the school Sickness and Absence Policy.

