HEART OF THE FOREST

COMMUNITY SPECIAL SCHOOL

STAFF CAPABILITY POLICY

Approved by:	HoF Governing Body	**Date:**	11/03/2026
Signed by Chair of Governors:		**Date:**	11/03/2026
Last reviewed on:	February 2026	**Next review date:**	February 2027
Website:	Yes	**Type:**	Statutory

Capability

1.0 Introduction

1.1 The Governing Board recognises the importance of good working relationships with its employees and seeks to ensure that concerns with capability are dealt with in a fair and timely way.

1.2 When an employee is not meeting the performance standards of their role or is not doing so consistently, this procedure provides a framework to manage employees' work to an acceptable standard in a consistent and supportive manner, and ensure these standards are sustained. Managers are responsible for the successful operation of this procedure with the school.

1.3 This policy sets out the measures available to managers in cases where the appraisal procedure has failed to achieve sufficient improvement in performance or where the matter is so serious that formal action is required.

1.4 It is based on the principles of the ACAS Code of Practice on disciplinary and grievance procedures and current employment and educational legislative requirements.

1.4 This policy applies directly to the following employees:

1.4.1 Support staff: where there are concerns which informal action has been unable to address or which are serious enough to require formal action.
1.4.2 Teachers: where there are concerns which the appraisal process has been unable to address or which are serious enough to require formal action.

1.5 This policy does not form part of an employee's contract of employment and is entirely noncontractual. It may be amended, withdrawn, suspended or departed from at the discretion of the school at any time.

1.6 Please note: if the school has purchased legal insurance which covers employment issues, it should refer to the terms and follow any requirements of the policy.

2.0 Governing Board expectations

2.1 Head teacher / school managers:

2.1.1 Regularly review the performance of employees and respond to any situations where an employee's performance is unacceptable
2.1.2 Give employees regular feedback
2.1.3 Have early discussions with the employee about problems, possible causes and solutions
2.1.4 Support the development of employees

2.2 Employees:

2.2.1 Maintain acceptable standards of attendance, job performance and conduct
2.2.2 Take responsibility for their own development
2.2.3 Raise with their manager any problems that are affecting their work as soon as possible
2.2.4 Accept responsibility for their own work performance
2.2.5 Respond constructively to advice, guidance and development provided by their manager
2.2.6 Are flexible and cooperate with changing work requirements

3.0 Capability expectations

3.1 Capability is an employee's capacity to apply appropriate knowledge and skills in order to achieve effective and efficient work standards and practices.

3.2 Employees should have a clear understanding of what is required of them to meet work standards and practices, with the first point of reference being their job description and person specification, although these documents should not be regarded as exhaustive.

3.3 Managers should give regular feedback on how well an employee is fulfilling the requirements for their post and it is recommended this is a minimum of an annual formal review. For teachers, this will be the appraisal period and it is recommended there is a similar arrangement in place for support staff. Teachers and head teachers should be assessed against their relevant Professional Standards.

3.4 The head teacher or Governing Board (as appropriate) should consider whether certain teachers should also be assessed against other relevant sets of standards.

4.0 Capability concerns

4.1 A capability concern is when expected work standards are not achieved or maintained. This could include when an employee:

4.1.1 Does not make sufficient progress towards the objectives set in their appraisal review
4.1.2 Does not meet the professional standards required for their teaching status
4.1.3 Does not carry out the duties and responsibilities of the post to an acceptable standard
4.1.4 Is unable to carry out their duties effectively due to long-term absence or frequent absences (unacceptable absence is dealt with under the school's attendance policy)

4.2 Capability differs from conduct, with capability relating to inability to reach required performance standards and conduct normally relating to an employee's behaviour. For

instance, it is usually a conduct issue if the employee has control over their actions e.g. deliberately not following a process, versus lacking the skill to sufficiently perform said process which would be a capability concern.

5.0 Informal action

5.1 Informal action would normally be taken:

5.1.1 When the employee has a previous good work standard and the matter appears easily rectifiable and

5.1.2 When an observation (normally teachers) has taken place or other evidence has come to light, which indicates less-than-acceptable performance

5.2 Issues should be addressed using normal management processes (normally the appraisal process) in the first instance. These should not be left until the next planned meeting but addressed as soon as possible.

5.3 Informal action could include an informal action plan with planned support and/or training for the employee.

6.0 Formal action

6.1 Formal action should be taken when the employee has:

6.1.1 Repeated occasions of poor performance or where matters have not improved following informal action

6.1.2 Performance concerns that are so serious they cannot reasonably be addressed through informal action

6.1.3 Previous formal warnings on file for any reason that are still current and there is a continued or new performance concern

6.2 No formal action should commence against a trade union representative until the circumstances of the case have been discussed with the appropriate branch or full-time officer, with the prior permission of the employee. If the employee does not wish there to be any prior discussion with the branch or full-time officer then formal action will proceed in the normal way under this procedure.

6.3 Although there is an expectation that formal action is generally progressive, in some situations the initial formal meeting could be under stage two, dependent on the severity of the situation and the circumstances.

6.4 At each stage, a formal meeting will be arranged with the employee.

6.5 If the concern is established the outcome would normally result in a warning and sanction or ultimately dismissal. The maximum warning for each stage is detailed in the table below, however the chair has the flexibility to apply lesser sanctions if appropriate (i.e. issuing a first written warning at a stage two meeting, if the concern was not enough to warrant a final warning as detailed).

6.6 Sanctions (including associated financial outcomes) will not disproportionately impact employees covered under the Equality Act 2010, and will be considered on a case by case basis.

6.7 The stages of formal action and potential sanctions are given below:

Formal stage	**<u>Maximum</u> level of sanction at each stage**	**Suggested period of review**
One – formal capability meeting	First warning. Withholding an increment for support staff or preventing progression to the next pay point/grade for teachers	Between four and ten weeks
Two – formal review meeting (this stage only applies if a first written warning was issued at stage one)	Final written warning Withholding an increment for support staff Preventing progression to the next pay point/grade for teachers	Between four and ten weeks
Three – decision meeting (will normally progress to this stage after a final written warning has been issued at stage one or two)	Dismissal	

6.8 <u>Stage one:</u>

6.8.1 The warning cautions the employee that if their capability does not improve, it may be necessary to consider further formal warnings, up to and including dismissal

6.8.2 A decision can be made to issue a first written warning at stage one depending on the severity of the issue

6.8.3 If improvement is not achieved at this stage or sustained thereafter, then it is likely to result in progression to stage two

6.8.4 A decision can be made at this stage to withhold any incremental or salary progression at the next salary review date

6.9 <u>Stage two:</u>

6.9.1 A decision can be made to go straight to stage two (without a first warning being in place) depending on the seriousness of the issue. This might occur where the employee's unacceptable performance has had, or is liable to have, a very serious or harmful impact on the school and/or pupils

6.9.2 The maximum sanction at this stage is a final written warning

6.9.3 A decision can be made at this stage to withhold any incremental or salary progression at the next salary review date

6.10 Stage three:

6.10.1 An employee can only progress to this stage if a final written warning is already in place

6.10.2 The maximum sanction at this stage is dismissal

6.10.3 Any notice will be in line with normal contractual arrangements or statutory notice depending on which is greater

6.11 The start date of the formal warning will commence when the related action plan and support programme is finalised. Therefore any outcome will be confirmed in writing to the employee within three working days of the decision, including as appropriate:

6.11.1 The nature of the concern

6.11.2 The required improvement

6.11.3 Support arrangements including any additional training if appropriate

6.11.4 The monitoring arrangements and handling of the formal review stage (only applicable after a first written warning) including the review date

6.11.5 What will happen if there is no, or insufficient, improvement and the further formal action that could be taken as a result

6.11.6 How long the warning will remain in force

6.11.7 Any effect on pay

6.11.8 Action plan

6.11.9 Details of how the employee can appeal

6.12 A written warning will remain live for the duration as set out in the outcome letter, usually 12 months.

6.13 If an employee appeals against an outcome, the sanction will remain in place until the outcome of the appeal is known.

7.0 Investigation

7.6 An investigation is the gathering of information relating to a capability issue which the manager will normally arrange. An investigation must be carried out before calling a formal meeting and will usually include a discussion with the employee about the issue.

7.7 Following the investigation, a decision will be made as to whether to drop the matter, provide informal support or, in cases which require action under the Capability Policy, to arrange a formal meeting.

7.8 All parties to the proceedings have an obligation to co-operate to ensure that processes and timescales are followed without delay.

8.0 Right to representation

8.1 The employee has a right to be represented/supported by a trade union representative or workplace colleague during formal capability meetings.

8.2 If the employee's representative is unavailable for any of the formal meetings, an alternative date (usually within five working days) will be arranged. There will normally be only one postponement allowed for this reason. If the representative subsequently becomes unavailable for the re-arranged meeting the employee may be advised they will need to find a different representative and it is the union's responsibility to ensure an alternative representative is provided.

8.3 The employee does not have a specific right to be accompanied at an informal meeting by a trade union representative or workplace colleague. However it is recommended they be given the opportunity to be accompanied if there is the possibility of formal action being taken at a later date.

8 Formal meeting

8.1 The head teacher and/or a governor, or a panel of governors can conduct a formal meeting. The Governing Board may delegate responsibility to the head teacher for formal action including the decision to dismiss.

8.2 For the formal stages up to stage two, the holding of formal meetings and the issuing of warnings may be delegated to an appropriate member of the leadership team e.g. business manager.

8.3 Where the head teacher is the subject of the formal meeting, the Governing Board may delegate responsibility for formal action to one (usually the chair of governors) or more governors.

8.4 However, the head teacher or same governing board representatives cannot take dismissal decisions if they have been directly involved in making decisions on previous formal warnings. And where practicable, different people should carry out the investigation and disciplinary hearing.

8.5 The manager should make it absolutely clear to the employee that formal action is being taken:

8.5.1 At least five working days' notice will be given to the employee attending the formal capability meeting. For a formal meeting where dismissal is being considered, at least 10 working days' notice should be given.

8.5.2 The letter should include details of the right to representation, the Capability Policy and the documents to be discussed at the meeting (i.e. documentation about the performance concerns). There should be an additional copy for the representative that the employee can send, or it can be sent directly to the representative if the employee has advised the school who their representative is, provided the employee has agreed.

8.5.3 The letter must state the formal stage at which the meeting is being held and the possible outcome/sanction that may result.

8.5.4 The employee must be given a date by which to provide any documentation to support their case (five working days). Sufficient time should be given to allow papers to be distributed to the chairperson/panel to be read prior to the formal meeting. If this is not possible they should contact a relevant person to make appropriate arrangements.

8.5.5 For a formal meeting where dismissal is being considered, the employee must ensure the school receives any documents at least five working days before the meeting to ensure all parties receive the documentation at least three working days before the formal meeting to allow time to read and understand the content.

8.5.6 Any formal action taken and the reasons for the decision will be confirmed in writing to the employee, including details on how they can appeal. The employee should be informed of the consequences of failing to improve sufficiently within the set period following a final warning, including confirmation that it may result in dismissal.

8.6 It is good practice to make a note of performance reviews and informal meetings to inform future proceedings. Where a formal meeting takes place, minutes must be taken. Where dismissal is a potential outcome, minutes should be kept and consideration should be given to having note-taker present. Employees are not permitted to make their own audio recording of a capability meeting.

9 Action plan

9.1 Action plans are developed to suit individual circumstances but would normally include clear expectations regarding work standards and practices, the criteria for success, time scales for improvement and any agreed support and review arrangements. The employee may be given the opportunity to discuss the content of this plan with their trade union representative before agreeing to it.

9.2 Whilst it is for the manager to determine the criteria it is important that the employee understands what is required of them and to help identify potential support. Employees are expected to co-operate with the process and engage fully with any agreed support.

9.3 Should the employee not achieve a successful outcome following the action plan they would normally progress to the next stage of the capability policy, and ultimately could be dismissed.

9.4 Arrangements for monitoring and review will be agreed as part of the action plan.

10 The role of Governors

10.1 The school may delegate the head teacher (or manager), a single governor or a panel of governors to hear a formal case as appropriate (see above).

10.2 A panel of governors (up to three) will hear an appeal.

10.3 Where collaborative arrangements with another Governing Board are in place regarding staff capability, governors from any of the collaborative schools may be delegated to conduct a formal meeting or appeal.

11 The role of GCC and the Diocese

11.1 A representative from GCC is entitled to attend and provide advice at all proceedings in Community, Community Special, and Voluntary Controlled schools, relating to any decision dismissal decisions.

11.2 Similarly, The Diocese, through a representative, may be given the right to attend proceedings to give advice for Voluntary Controlled church schools.

11.3 In Foundation schools, Voluntary Aided schools and Academies, the governors may give GCC rights of attendance. These rights should be the same for the diocese in a Voluntary Aided church school.

11.4 The Governing Board or, via delegation, the head teacher (in applicable schools as above or where rights of attendance have been given), must consider any advice given by the GCC and/or diocesan representative before a decision to dismiss is made.

12 Absence during the capability procedure

12.1 If the employee becomes absent during the capability process the head teacher is advised to contact their HR provider as soon as possible to ensure that the best course of action is followed.

12.2 Sickness absence should not normally delay any part of a capability process. If during the process the employee is signed off as medically unfit for work, the employee should be referred immediately for Occupational Health assessment (if available) including in the referral details of the process including the stage reached in the procedure, and the question of whether they are fit to attend formal meetings.

12.3 Where the employee is unable to attend capability related meetings for health reasons, the meetings may proceed in the employee's absence, considering all the circumstances of the case. They may submit a written statement and/or their representative may attend on their behalf. It is advised that further guidance is obtained from the school's HR provider if there are difficulties in arranging for an employee to attend meetings.

12.4 If the employee is absent during the period of any formal warning being in force, the warning will be extended by a period equivalent to this absence from work. Any such extension must be confirmed in writing to the employee.

12.5 The absence will be dealt with in accordance with the school's attendance policy.

12 Dismissal

12.1 In all Schools, Governors will send the employee a dismissal notice.

12.2 However, for Community, Voluntary Controlled and Special schools, the Governing Board will also send an instruction to GCC and the employee will receive a confirmation of dismissal notice from GCC.

12.3 Where dismissal is with notice, any notice period will be in accordance with the employee's contractual arrangements, or the statutory period, whichever is greater. The employee will receive normal pay throughout the period of notice.

13 Right of appeal

13.1 There is a right of appeal at every stage of the formal absence process as specified in the warning or dismissal letter.

13.2 The appeal is not a rehearing of the case but is a review of the reasonableness of the decision. Determining reasonableness may include consideration of procedural irregularities or any relevant new evidence which could not have been available at the time of the formal meeting.

13.3 Whilst the outcome of the appeal is pending, an action plan, warning or dismissal will remain in force.

13.4 The appeal letter must be received within five working days of the date of the outcome letter and should specify the grounds of the appeal including why and in what respects the decision of the original meeting was unreasonable. The appeal needs to be sufficiently clear to enable the initial chair whose decision is being appealed to respond at the appeal hearing.

13.5 Any supporting documents or information should be provided with the appeal letter. If this is not possible, documents should be submitted to allow reasonable time for the employer to

prepare their case and collate, paginate and distribute the bundle for receipt by all parties at least three working days before the appeal meeting.

13.6 Where the appeal period overlaps with a pre-determined holiday period (i.e. out of term-time for term-time only employees), the letter of appeal needs only to register the intention of appeal. A fully detailed letter should arrive within five working days following the end of the holiday period.

13.7 A panel of up to three governors not previously involved with the case will conduct appeal meetings. Where there has been an appeal at an earlier stage of the procedure, the same governors may conduct the appeal.

13.8 Arrangements for the appeal meeting should normally be notified to the employee within 10 working days of receipt of the request for an appeal. The employee should be reminded of the right to be accompanied by a trade union representative or workplace colleague.

13.9 At appeal, the original sanction will be reviewed and may be amended or withdrawn but it cannot be increased.

13.10 The decision of the appeal panel will be final, and will be confirmed in writing to the individual within three working days. Should the outcome of the appeal change the original decision, the panel will need to make clear the terms and reasons of that decision.

13.11 If an appeal is successful, any outcome will be amended or withdrawn without detriment to the employee. In the case of dismissal, there will be no detriment to pay or continuous service.