

# THE MANOR – A FOUNDATION SCHOOL POLICY DOCUMENT

LACK OF CAPABILITY ALL EMPLOYEES OTHER THAN THE PRINCIPAL AND  
LEADERSHIP TEAM POLICY  
RESPONSIBLE COMMITTEE: <PERSONNEL>

[ 9<sup>th</sup> Nov 2010  
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[To be read in conjunction with the School Staffing (England) Regulations 2003 and the Secretary of State's Guidance]

## 1. Definitions

- 1.1 The term "Principal" also refers, where appropriate, to any other title used to identify the Principal.
- 1.2 The term "employee" refers to any member of the staff, other than the Principal and Leadership Team, teaching or non teaching, whether or not employed to work solely at the school.
- 1.3 The term "senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support member of staff in cases involving support staff, delegated by the Principal to deal with a capability matter under these procedures. A senior manager may only make a decision to issue up to and including a final written warning.
- 1.4 If the Principal, 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 Principal will take the role of the senior manager for that specific case and the role of the "Principal" under this procedure will be performed by a "Staff Dismissal Committee" of the Governing Body consisting of not less than 3 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 "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 of time.

## 2. Guidance prior to using the Capability Procedure

- 2.1 If an employee's performance is less than wholly satisfactory, as a first step the senior manager, or other person with line management responsibility for the employee, will discuss with the employee the shortcomings as specifically as possible. In the case of a teacher this could include the team leader responsible for the teacher's performance review under the school's performance management policy. Structured information and systematic recording will inform the discussion. The employee will be given a reasonable opportunity to comment and explain. In the course of these discussions, appropriate targets will be set and any appropriate remedies, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals, will be considered and planned. The employee will also be informed that his/her performance will be monitored over an identified and specified period. This will not normally exceed six weeks. However, if the concerns

relate to a lack of capability that poses a real risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, a shorter timescale may be appropriate. In extreme cases, the senior manager may decide to initiate formal procedures immediately if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.

- 2.2 At this stage an oral warning may be given that if wholly satisfactory performance is not achieved within a defined period this could cause the matter to be dealt with under the formal procedures set out below. An oral warning is not part of the formal procedure that follows.
- 2.3 There is no appeal against an oral warning, which will not be recorded on the employee's personal record but should be confirmed in a written memorandum. The employee may make written comment on the memorandum if s/he has any objection to the issuing of an oral warning.
- 2.4 Continuing failure to achieve a wholly satisfactory level of performance following an oral warning would normally lead to formal action being taken in accordance with the procedures below.
- 2.2 Where a teacher is failing to perform to a wholly satisfactory level and guidance as indicated above has not brought about the desired improvement then the matter will be dealt with under the procedures below and will be separate from the school's performance management policy.

### **3. Time Scale (must be observed when the employee is a teacher)**

- 3.1 The time scale adopted will reflect the seriousness of the lack of capability. However, the overall period for improvement will not exceed the equivalent of two school terms from the date of entry into the formal procedures. Formal procedures commence on the date of the meeting at which a written warning is first issued.
- 3.2 In exceptional cases, it will not be appropriate or necessary to proceed through the first written warning stage of the procedure before a final warning can be issued. The decision to dispense with a first warning, however, would need to reflect the seriousness of the lack of capability of the employee concerned.
- 3.3 When there are genuinely extreme circumstances in which a period for improvement of two terms would seriously jeopardise the health, safety, welfare or education of pupils, the period for improvement may be reduced to a period of not less than four weeks.
- 3.4 In extreme cases, where it is clear that the health, safety or well-being of pupils would be compromised if even a shortened capability procedure were followed, an employee may be suspended on full pay. In such cases, the formal procedures would be suspended and a recommendation for dismissal made to the Staff Dismissal Committee.

#### 4. Sickness absence and the use of this procedure

- 4.1 It is important that sickness absence should not be used to delay or avoid the use of formal capability procedures. If there are concerns that an employee may be using sickness absence in this way then arrangements should be made to seek medical advice from an occupation health adviser to assess the employee's health and fitness for continued employment at the school.
- 4.2 Following receipt of medical advice consideration may be given to moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health.
- 4.3 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 could also be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure.

#### 5. First Written Warning

- 5.1 If, after a reasonable period from the action taken in paragraph 2 above, it is considered that the employee's performance has not reached a wholly satisfactory level, the employee will be required to attend a meeting with the senior manager.
- 5.2 The senior manager will write to the employee at least five working days in advance 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 an independent trade union or some other person 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 hearing.An extra copy, together with any enclosures, should be provided for his/her representative.
- 5.3 At the meeting, the employee (or his/her representative) will be given a reasonable opportunity to comment on the concerns and to ask questions. At the conclusion, the senior manager will state his/her decision and will afterwards confirm this in writing to the employee (with a copy for his/her representative).

- 5.4 If the senior manager considers that the concern about the employee's performance was justified, s/he will give the employee a first written warning. The warning letter will make clear:
- a) the nature of the shortcomings in the employee's performance
  - b) the period during which and the way in which the employee's performance will be assessed
  - c) that failure to perform to a wholly satisfactory level may lead to a final written warning.
  - d) that if the employee's performance becomes wholly satisfactory before or by the end of the assessment period, the written warning will be disregarded.
- 5.5 The warning letter or documentation following the letter will also make clear
- a) the support to be provided to the employee
  - b) the improvements in performance that the employee must demonstrate during the monitoring period and the kinds of evidence that will be sought to ascertain whether these improvements have been achieved
  - c) those aspects of the employee's performance that will be assessed and by whom
- 5.6 If the senior manager considers that the employee's performance is still not wholly satisfactory by the end of the assessment period but that a final warning is not justified, s/he will call another meeting as outlined in the above paragraphs. The senior manager may decide to give the employee a further written warning in accordance with the above paragraphs, rather than a final written warning, if s/he thinks this is fair and will be effective.

## 6. Final Written Warning

- 6.1 If the senior manager considers that the employee's performance is still not wholly satisfactory, even if there has been some improvement, by the end of the assessment period, s/he will call another meeting as outlined above.
- 6.2 If at the conclusion of the meeting the senior manager still considers that the employee's performance is not wholly satisfactory, the senior manager may decide to issue a final written warning which will make clear over what period and in what respect the employee's performance will be assessed and that failure to perform to a wholly satisfactory level will lead to a hearing before the Principal, who has the power to dismiss.
- 6.3 At this stage, rather than refer the matter to the Principal, 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 suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

## **7. Right of Appeal against a formal written warning**

- 7.1 The employee has a right of appeal against a written warning issued by a senior manager (see paragraphs 5 and 6). The appeal will be heard by the Disciplinary Panel of Governors. The number of governors on the Disciplinary Panel of Governors will not be less than two. The panel shall be advised by a person engaged for the purpose by the Governing Body. The panel can either confirm the warning, reduce a final warning to a warning or cancel the warning.
- 7.2 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within five working days of the formal written warning having been received.
- 7.3 All appeal hearings will be held as soon as possible after receipt of the appeal.
- 7.4 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.

## **8. Dismissal**

- 8.1 If the senior manager considers that the employee has failed to meet the required standards by the end of the specified assessment period, the employee will be informed, in writing, of the requirement to attend a hearing before the Principal in accordance with the procedure for calling a meeting as set out in 5.2 of these procedures. Where such a meeting with the Principal is called the employee shall be suspended on full pay pending the outcome of the hearing.
- 8.2 If the Principal decides that the complaint is justified, s/he may decide to dismiss the employee and will confirm his/her decision and reasons in writing to the employee (copy to his/her representative) as soon as possible after the hearing.
- 8.3 The Principal may decide not to dismiss but to issue a further written warning for a specified assessment period. *There is no right of appeal against such a decision to issue a written warning.*

## **9. Right of Appeal against a decision to dismiss**

- 9.1 The employee has a right of appeal to the Appeals Committee of the Governing Body against a decision of the Principal.

- 9.2 The Appeals Committee shall consist of at least 3 governors, none of whom will have had any involvement in the case.
- 9.3 The employee's notice of appeal should be sent to the Clerk to the Governors within five working days of receipt of the written decision to dismiss.
- 9.4 Appeal hearings should be held as soon as possible after receipt of the appeal.

**10. Notice of Dismissal**

- 10.1 Following a decision to dismiss the Governing Body will notify the employee in writing of the decision, whether with notice or with pay in lieu of notice in accordance with the decision of the Principal.

**11. Grievances arising during the procedure**

- 11.1 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 above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

**12. Trade Union Officials**

- 12.1 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.

**13. Confidentiality**

- 13.1 The proceedings of this disciplinary procedure shall remain confidential to the parties concerned. Only the decision of a disciplinary hearing may be reported.