



## ALTERNATIVE PROVISION

# Staff Capability Policy

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Approved by: [RAISE-AP Educational Directors](#)

Approval Signatures

*RAISE-AP  
Directors*

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## Introduction

RAISE-AP expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. The provision acknowledges that there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

This policy defines how the provision will manage an employee if they are unable to perform to the required standards.

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## Scope

This policy applies to teachers including leadership, upper pay range, main pay range, unqualified teachers, support staff and admin staff.

This policy does not apply to volunteers, contractors or agency workers.

This policy is non contractual and does not form part of any employee's terms and conditions. Employees with less than two years service may be subject to a shortened procedure. Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The provision expects all parties to maintain confidentiality throughout the application of the policy.

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# Performance Management

## Performance Management

RAISE-AP will manage an employee's day to day performance with the Performance Management Policy.

### Annual review

Every employee will have an annual review of their performance. The review process enables an employee's performance to be monitored and assessed.

### Pay progression

If an employee is unable to perform to the required standards of the role, this may have an impact on their annual pay progression.

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# Managing Capability

## Considerations

The manager must consider whether to start the capability process if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent.

There may be exceptional circumstances when the manager and/ or employee anticipate a long-term capability concern. This may happen due to the employee's health or a disability. In these circumstances, it is anticipated it is unlikely that the employee can achieve the required level of performance.

Consideration must be given to whether reasonable adjustments are appropriate. The line manager must seek advice from Education Personnel Services in such cases.

## Policy stages and principles

The possible stages are:

- Informal stage
- Formal stage one
- Formal stage two
- Formal stage three - may result in dismissal
- Appeal after each formal stage.

There is a shortened procedure for employees with less than two years service as detailed in this policy. As a general principle the manager will seek to use the informal stage prior to progressing to the formal stages.

In exceptional circumstances, it may be appropriate to start at the formal stage without using the informal stage. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

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## Informal Stage

### Informal stage

The manager should speak to the employee by having an informal discussion known as a managerial support discussion. Depending on the circumstances, this could become a series of informal discussions.

### Right of representation

The employee is not usually accompanied at any discussions within the informal stage of the policy. There may be circumstances when the employee asks to be accompanied, and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

### Outcomes

The manager undertaking the managerial support discussion(s) must decide on the outcome. A record must be made of each discussion. The manager must share the record with the employee. A copy must be kept on the employee's personnel file.

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## Formal Stage

### Formal stage

At each formal stage of the policy, the employee must be invited to attend a meeting/hearing.

### Meetings/hearing

The employee must receive in writing the invitation to the meeting/hearing.

The letter must give the employee 5 working days' notice of the meeting/ hearing.

### Formal record of the meeting/hearing

A formal record must be taken during the meeting/ hearing. This may be made by audio recording the meeting/ hearing or by a note taker. It is the provision's responsibility to make the appropriate arrangements.

If an audio recording takes place, a copy of the recording must be retained by the provision. The provision must comply with all relevant retention and storage requirements.

### Alternative date

The provision expects that the employee and their representative will make all reasonable efforts to attend the first scheduled meeting/ hearing date and time.

If it is not possible, the employee may propose an alternative date and/ or time. This should be within 5 working days of the original meeting/ hearing.

The meeting/ hearing will be rescheduled.

### Sharing of information

The manager and employee are required to exchange all relevant papers and supporting evidence in advance of the meeting/ hearing. Management documents will be supplied with the invitation letter.

The employee or their representative must submit all relevant papers and supporting evidence to arrive with the chair at least 3 working days before a meeting/ hearing.

## **Right of representation**

The employee has the right to be represented/ accompanied at a formal stage meeting/ hearing or appeal meeting. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- Arrange their own representative
- Liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- Advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

## **Attending formal meetings/hearings**

If the employee is not well enough to attend the meeting/ hearing, it may be deferred until they are able to attend. A meeting/ hearing will not be deferred indefinitely because the employee is unable to attend.

## **Outcomes of a formal meeting/hearing**

The chair of the formal stage meeting/ hearing must fully consider all formal evidence presented and decide on an outcome.

A written warning may be issued and this can be:

- A first written warning of 12 months
- A final written warning of between 12 – 24 months
- For employees with less than two years service - a final written warning of between 12 – 24 months.

At a stage three hearing the employee may be dismissed on the grounds of performance capability.

The chair must confirm the outcome in writing within 5 working days of the meeting/ hearing. A copy of the outcome letter and any warning must be placed on the employee's personnel file.

If the outcome is dismissal, any sums owing to the provision from the employee will normally be deducted from their final pay.

## **Review meetings**

Following the formal stage meeting/ hearing the manager must hold scheduled review meetings with the employee.

## **Progression through the formal stages**

The manager can progress to the next formal stage and re-enter the through the formal stage at the appropriate point if:

- The employee's performance does not meet the standard required
- there is a further performance concern even though this may be different to a performance concern(s) referred to in a previous stage
- If an improvement is not sustained for a 12-month period following a formal stage one meeting
- If an improvement is not sustained for a 12 - 24-month period following a formal stage two meeting
- The employee has not been successfully redeployed and/ or has refused a reasonable offer of alternative employment.

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## **Appeal Stage**

### **Appeal stage**

The employee has the right to appeal against the outcome of a formal meeting/ hearing.

### **Right of appeal**

The employee must submit their appeal in writing within 10 working days following receipt of the written outcome of the formal meeting/hearing. This must include the full reasons for the appeal.

Following an appeal of a formal stage three hearing, there is no further right of internal appeal.

### **Appeal meeting**

The employee must be invited to attend a meeting. The letter must give the employee 7 working days' notice of the meeting. The principles of the formal stage meeting/ hearing arrangements will apply.

### **Formal record of the meeting**

The principles of a formal record of the meeting/ hearing will apply.

### **Alternative date**

The principles of alternative date will apply.

### **Sharing of information**

The principles of sharing of information will apply.

### **Right of representation**

The principles of the formal stage right of representation will apply.

### **Outcome of appeal meeting**

The chair must fully consider all evidence presented and decide on an outcome.

The outcome cannot impose a higher sanction than issued at the formal meeting/ hearing. The chair must advise the employee of the outcome at the appeal meeting unless otherwise agreed. The outcome must be confirmed in writing within 5 working days of the meeting.

A copy of the outcome letter must be placed on the employee's personnel file.

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## **Gross Incompetence**

### **Definitions**

Gross incompetence - occurs where an investigation identifies that an employee has failed, either by a single error or series of errors, to perform the duties of their role. The outcome is that this causes or has caused serious harm or puts others (colleagues, general public or service users) or the provision's reputation and performance at serious risk.

Gross incompetence only applies in exceptional circumstances.

The manager must seek advice from Education Personnel Services in such cases.

## **Policy stages and principles**

The possible stages are:

- Formal stage three hearing – may result in dismissal
- Appeal

## **Suspension or alternative arrangements**

Before making a decision about suspension or alternative arrangements, the appropriate manager must seek advice from Education Personnel Services.

Suspension or alternative arrangements are neutral and precautionary acts. They may be considered at any point during this policy once it is established that the circumstances may be gross incompetence.

The appropriate governance arrangements must be adhered to in deciding whether suspension or alternative arrangements are appropriate. During suspension or alternative arrangements, the employee must adhere to all relevant requirements.

Written confirmation of the decision regarding suspension must be provided to the employee. Suspension or alternative arrangements must be regularly reviewed.

There is no right of appeal against the decision to apply alternative arrangements or suspension.

## **Formal stage 3 hearing**

The principles of the formal stage meeting/ hearing will apply.

## **Hearing arrangements**

The principles of meeting/ hearing arrangements will apply.

## **Formal record of the meeting**

The principles of a formal record of the meeting/ hearing will apply.

## **Alternative date**

The principles of alternative date will apply.

### **Sharing of information**

The principles of sharing of information will apply.

### **Right of representation**

The principles of the formal stage right of representation will apply.

### **Attending a formal stage 3 meeting**

The principles of attending a formal meeting/ hearing will apply.

### **Outcome of the formal meeting**

The principles of outcome of the formal meeting/ hearing will apply.

### **Appeal**

The principles of the appeal stage will apply.

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## **Other Policy Requirements**

### **Confidentiality**

It is expected that all parties involved in the managing sickness absence process will maintain confidentiality as appropriate. This is both within and outside of the provision (including social media).

If any party does not maintain confidentiality action may be taken under the Disciplinary policy.

### **Right of representation**

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The employee is not usually accompanied at any discussions within the informal stage of the policy. There may be circumstances when the employee asks to be accompanied and consideration should be given to any requests. This should be accommodated where it does not cause a delay to the process.

The employee has the right to be represented/ accompanied at a formal stage meeting/ hearing or appeal meeting. This can be by a professional association/ trade union representative or a work colleague.

It is the employee's responsibility to:

- Arrange their own representative
- Liaise with their representative to agree the formal meeting/ hearing or appeal meeting date and time
- Advise management of the representative's details.

There is no right to legal representation at any stage of this policy.

### **Referral to Occupational Health/medical practitioner**

It may be necessary to refer the employee to Occupational Health/ medical practitioner to obtain medical advice and information.

If an employee does not co-operate with the referral, any assessment or decision taken will be based on the information available.

### **Redeployment**

Redeployment can be considered at any stage in this policy and: must not be used as a sanction should result in satisfactory performance in the new role is subject to a suitable opportunity being available.

### **Requirement for the provision to pass on information about a teacher's capability to a new employer**

A Headteacher or teacher may apply for a job with an alternative employer. The employee may have been subject to the formal stages of the Capability policy within two years prior to starting a job with a new employer. In such cases, the provision must notify the new employer.

## **Safeguarding**

The provision may take action under the Capability policy for reasons that relate to a safeguarding concern. Such cases must be dealt with in accordance with Hampshire's Child Protection procedures.

This ensures that a child, young person or vulnerable adult is not at risk or that a police or social care investigation is prejudiced.

Advice must be sought from Education Personnel Services.

In the following circumstances it may be necessary to make a referral to the relevant body:

- If a dismissal takes place
- In circumstances where a formal process regarding a capability concern has not concluded and the potential outcome may have resulted in dismissal.

Where there is a requirement to make a referral to a relevant body, the employee must be notified in writing that a referral has taken place.

For further guidance please contact Education Personnel Services.

## **Mutual agreement**

As an alternative to a formal stage meeting/ hearing, the provision and the employee may discuss a mutual agreement. The contract of employment may be ended by mutual agreement between the employee and the provision.

There is no right to appeal a mutual agreement as it is entered into with the consent of both parties.

## **Fast track procedure**

In very serious cases, a final warning may be issued at a formal stage one meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the manager can proceed to a formal stage three hearing.

Further advice must be sought from Education Personnel Services.

## **Formal action – professional association/trade union representative**

Where there are concerns involving a professional association/ professional trade union representative, must notify and seek advice from Education Personnel Services before taking formal action.

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## **Raise Values**

Our **RAISE-AP values** (Resolve, Attitude, Invest, Social Skills and Education) are key in everything we do, specifically with attitudes (modelling and expectations), invest (tailoring setup for our young people) social skills (becoming part of a community) which are linked to our Staff Capability policy.

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## Appendix I

### Managing Capability for employees with less than two years service

#### Policy stages

The possible stages are:

- Informal stage
- Formal stage – may result in dismissal
- Appeal only against a dismissal.

As a general principle the manager will seek to use the informal stage prior to progressing to the formal stages. In exceptional circumstances, it may be appropriate to start at the formal stage without using the informal stage. The manager must seek advice from Education Personnel Services in such cases.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

#### Informal stage

The principles of the informal stage will apply.

#### Formal stage

The principles of the formal stage will apply.

#### Appeal stage

The principles of the appeal section will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

#### Gross Incompetence

The principles of gross incompetence will apply.