

Stone Bay School.

Policy Document.

Statutory Policy required by Education Legislation.

A1: Capability of staff.

Legislation informing this policy:

- [The School Staffing \(England\) Regulations 2009](#)
- [The School Staffing \(England\) \(Amendment\) Regulations 2012](#)

Links to related policies, guidance and protocols.

- [Education \(School Teachers' Appraisal\) \(England\) Regulations 2012](#)
- ACAS Code of Practice on Disciplinary and Grievance Procedures.

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4 year review cycle.

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Signed. Richard Farr. Date: Tuesday, 16 June 2015
Chair of Governors.

Signed. Billy Mc Inally. Date: Tuesday, 16 June 2015
Headteacher.

Introduction

Stone Bay School will stay within the legal framework set out in the Appraisal Regulations and in other relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).

Stone Bay School has adopted the Model Procedure for Managing Staff Disciplinary Matters and Poor Performance in Community Schools. This also links to the school's Managing Absence policy.

Purpose.

This policy sets out the framework for managing capability and the formal capability procedure, reflecting the ACAS Code of Practice on disciplinary and grievance procedures. This replaces the statutory guidance "Capability Procedures for Employees" that was issued in July 2000. Capability procedures apply to all staff about whose performance there are serious concerns that the appraisal process has been unable to address.

Capability Procedure.

This procedure applies only to staff about whose performance there are serious concerns that the appraisal process has been unable to address.

At least ten working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the Employee of their right to be accompanied by a companion who may be a colleague, or a trade union representative .

Formal Capability meeting.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher (for other Employees). The meeting allows the Employee, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting 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. The person conducting the meeting may also adjourn the meeting, for example if they decide 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. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Identify the professional shortcomings, for example which of the standards expected of Employees are not being met;
- Give clear guidance on the improved standard of performance needed to ensure that the Employee can be removed from formal capability procedures. This may include the setting of new objectives, outwith those set at appraisal focused on the specific weaknesses that

need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;

- Explain any support that will be available to help the Employee improve their performance;
- 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. This will normally be between four and ten weeks, but in all cases it will be reasonable and proportionate. There will be a maximum limit of two terms for the formal assessment of capability.
- Warn the Employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the Employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring and review period following a formal capability meeting.

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal Review Meeting.

At least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the Employee of their right to be accompanied by a companion who may be a colleague, or a trade union representative .

If the person conducting the meeting is satisfied that the Employee has made sufficient improvement, the capability procedure will cease. In other cases:

If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;

If no, or insufficient improvement has been made during the monitoring and review period, the Employee will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The Employee will be invited to a decision meeting.

Decision Meeting.

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the Employee of their right to be accompanied by a companion who may be a colleague, or a trade union representative..

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the Employee will be dismissed.

The Employee will be informed 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 their right of appeal.

Dismissal.

The power to decide that members of staff should no longer work at this school has been delegated to the Headteacher, who will make a recommendation to the Governing Body. In the case of the Headteacher decisions will be made by the Governing Body. The required period of contractual notice will be given.

Appeal.

If an Employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the Employee.

The appeal will be dealt with impartially and, wherever possible, by Managers or Governors who have not previously been involved in the case.

The Employee will be informed in writing of the results of the appeal hearing as soon as possible.

General Principles Underlying this Policy

Confidentiality

The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Governing Body to quality-assure the operation and effectiveness of the capability procedures.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled Employees. The Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

Definitions

Unless indicated otherwise, all references to "Employee" include the Headteacher.

Delegation

Normal rules apply in respect of the delegation of functions by Governing Bodies, Headteachers and local authorities.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's Absence management policy. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The Governing Body and Headteacher will monitor the operation and effectiveness of the school's capability procedure.

Retention

The Governing Body and Headteacher will ensure that all written formal capability records are retained in a secure place for six years and then destroyed.

Safeguarding, Equality and Equal Opportunities Statement

Stone Bay School, and all policies and procedures, will promote equality of opportunity for all students and staff from all social, cultural and economic backgrounds. The school will ensure that no student or staff member is disadvantaged, discriminated against or treated less favourably because of their gender (including gender reassignment), race, disability, religion or belief, sexual orientation or due to pregnancy or maternity.

Stone Bay School aims to;

Foster good relationships and create effective partnerships with all sections of the community

Ensure that the school's service delivery, commissioning and employment practices will not discriminate unlawfully, either directly or indirectly

Provide an environment free from fear and discrimination, where diversity, respect and dignity are valued and celebrated

All aspects of Safeguarding will be embedded into school life and will remain the responsibility of all members of our school community.