Pathway Trust

Capability Policy

Policy effective from	1 September 2026
Policy owner	Director of People
Policy applies to	Berrow Church Primary School Burnham-on-Sea Infant School Castle Batch Primary School Charfield Primary School Cherry Garden Primary School Downend School East Huntspill Primary School Lyde Green Primary School Mangotsfield School Marlwood School Pawlett Primary School Priory Community School Severn Beach Primary School St Andrew's Church Junior School St Anne's Church Primary School The Castle School The King Alfred School Tortworth Primary School West Huntspill Primary School Worle Community School Pathway Partnership Teams
Policy changes since last version	New policy

1. Introduction

1.1 Pathway Trust is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all of our pupils, whatever their ability. Each employee will therefore be given support to help them continually improve their performance within their role and develop to their full potential, which will in turn help improve outcomes for our young people.

1.2 Having an effective performance and review process in place is one of the ways we can support our employees and deal with performance matters as they arise; this is set out in our Performance and Review Policy.

1.3 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and there is serious underperformance which the Performance and Review Policy has been unable to address.

1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It complies with the requirement for all schools to have a policy that deals with the capability of staff.

1.5 This policy does not form part of any employee's contract of employment and may be amended at any time following consultation.

1.6 Employees who transfer to the trust on their pre-existing terms and conditions of employment by way of a TUPE transfer may have enhanced contractual entitlements. Where this is the case, those enhanced contractual entitlements will continue to apply, unless superseded by subsequent arrangements.

1.7 The trust is committed to ensuring any policy and procedure does not disadvantage any individual with protected characteristics in line with Equality Act 2010. All policies and procedures are checked to ensure they do not discriminate either directly or indirectly or present any barriers.

2. Scope and purpose of this policy

2.1 The purpose of this policy is to provide a framework within which the trust can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.

2.2 This policy will be applied where there is underperformance, and informal support as set out in the Performance and Review Policy has been provided and the required improvement has not been made.

2.3 This policy applies to all employees of the school/trust, including the headteachers, teachers and support staff, excluding those who are in the probationary period. On successful completion of the probationary period, employee performance and review will be covered by this policy. This policy does not apply to cases involving sickness absence or misconduct. It does not apply to agency workers, contractors, consultants, or any self-employed individuals..

3. Notification and procedure for formal meetings

3.1 An employee will be given at least five working days written notice if required to attend any formal meeting under this procedure.

3.2 The written notification will also contain:

- Sufficient information about the performance concerns and their possible consequences (including the possibility of issuing a warning or dismissal) to enable the employee to prepare to answer the case at the formal meeting.
- Copies of any written evidence.
- Copies of witness statements and details of witnesses attending (if appropriate).
- Details of the time and place of the meeting.
- Your right to be accompanied (see paragraph 3.4).

3.3 Formal meetings will be conducted by the Headteacher/Director or another senior employee delegated this responsibility by the Headteacher/Director.

3.4 An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or an official trade union representative. Employees are entitled to request an alternative date which is within five days of the original date, if their representative is unable to attend the meeting. If your chosen companion will not be available for more than five working days afterwards, we may ask you to choose someone else.

3.5 The employee's appraiser may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting. Such a request should be provided in writing (at least 2 days prior to the meeting) with details of why such a witness should be called. The person conducting the meeting shall determine who shall be called as a witness and would request a written statement to be provided.

3.6 A formal meeting under this procedure will:

- discuss areas of performance shortcomings identified during the informal stage;
- allow the employee to respond to those concerns raised at the informal stage, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
- find out if there are any issues (both in or outside of work) that are affecting their performance that need to be considered with appropriate actions or support in place;
- identify what action (including support provided) has been taken to date and what the outcome was;

- give clear guidance on the improved standard of performance needed to ensure the employee can be removed from the formal capability procedure;
- where appropriate, identify and explain any support that will be available to help the employee improve performance;
- where appropriate, warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression; and
- confirm the timescales for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate ensuring that the arrangements minimise the impact on workload for all parties involved, and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.

3.7 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.

3.8 If at any stage the person conducting the meeting is satisfied that there are insufficient grounds for pursuing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will cease and the Performance and Review process will re-start. This will be confirmed in writing to the employee.

3.9 Following a formal meeting, the matters covered in paragraph 3.6 and any other relevant points will be confirmed in writing within 5 working days. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning (see section 4 and section 5)

3.10 Notes will be taken of all formal meetings and employees will be sent a copy following the meeting.

4. Formal capability meeting (Stage 1)

4.1 If we consider that there are serious performance concerns you will be invited to a formal capability meeting to establish the facts and give you the opportunity to respond before formal action is taken.

4.2 Where a warning is issued at stage 1, this will usually be a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure and there are still concerns, this could be a final written warning. The implications in relation to pay progression will be set out in writing.

4.3 The warning will normally remain active for 6 months to run concurrently with the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the

warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of paragraph 3.9 above (not returning to earlier stage).

4.4 **Monitoring & Review Period (1)**

- The length of the monitoring and review period following the formal capability meeting in this Trust is usually up to 6 weeks. However, in some cases it may be appropriate for a shorter or longer period to be set.
- At the end of the monitoring and review period you will be invited to a formal review meeting, unless you were issued with a final written warning in which case you will be invited to a decision meeting.

5. Formal review meeting (Stage 2)

5.1 If the person conducting the formal review meeting decides that sufficient progress and improvement has been made, then the capability procedure will cease and the performance and review process will restart. This will be confirmed in writing to the employee.

5.2 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.

5.3 If no, or insufficient improvement has been made during the monitoring and review period, you will receive a final written warning. A further Monitoring and Review Period will follow in accordance with paragraph 4.4.

5.4 The warning will normally remain active for 12 months to run concurrently with the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on your personnel file but will be disregarded in deciding the outcome of any future capability proceedings, subject to the provision of paragraph 3.9 above (not returning to an earlier stage).

5.5 **Monitoring & Review Period (2):**

- At the end of the further monitoring and review period, you will be invited to a decision meeting.
- At this stage and by agreement with you, instead of progressing to a decision meeting it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to your capabilities. If there is a vacant post which we agree with you is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the performance and review process would re-start.

6. Decision meeting (Stage 3)

6.1 The decision meeting will usually be conducted by the Headteacher/Director if they have not previously been involved or a panel of councillors/trustees not previously involved in the case, which could include the Headteacher/Director. Dismissal is a possible outcome of a decision meeting.

6.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the performance and review process will re-start and be confirmed in writing to the employee within 5 working days.

6.3 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed (usually 6 - 10 weeks). There will be a further decision meeting at the end of that extended monitoring and review period.

6.4 If performance remains unsatisfactory and of serious concern, a decision will be made that you should be dismissed. Normal delegation rules apply to the power of dismissal.

7. Appeal

7.1 If you feel that the decision to dismiss you or other action taken against you (including warnings) is wrong or unjust, you may appeal. You should appeal in writing to the Headteacher/Director, setting out the grounds for appeal within 7 working days of the decision.

7.2 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 set out in section 3.

7.3 The appeal will be dealt with impartially by a panel of councillors/trustees who have not previously been involved in the case in line with the trust's arrangements for appeals.

7.4 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity of pay.

7.5 You will be informed in writing of the results of the appeal hearing within 5 working days. Following the appeal hearing the panel may: (a) confirm the original decision; (b) revoke the original decision; or (c) substitute a different penalty.

7.6 There is no further right of appeal against the sanction or dismissal within the trust.

8. Sickness

8.1 If at any stage long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the trust's sickness absence policy.

8.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, for example, where an employee isn't engaging with the capability procedures and only where there is an assessment from a medical professional or occupational health services, on occasion it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

9. General principles underlying this policy

9.1 Confidentiality

The capability process will be treated confidentially. However, it needs to be recognised that, in supporting employees through this process, some degree of information sharing is likely to be necessary to quality-assure the operation and effectiveness of the process.

9.2 Consistency of treatment, fairness and respect

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

The trust will not tolerate abusive or insulting behaviour from anyone taking part in this process and any such behaviour will be treated as potential misconduct.

9.3 Grievances

Where an employee 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, and will be resourced appropriately to provide impartiality.

9.4 Retention and data protection

The trust will ensure that all written records are retained in a secure place. As part of the application of this policy, the school/trust may collect, process and store personal data in accordance with our data protection policy. We will comply with the requirements of the **Data Protection Legislation** (being (i) the General Data Protection Regulation (EU) 2016/679) unless and until the GDPR is no longer directly applicable in the UK and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998), including the Data Protection Act 2018). Records will be kept in accordance with our Privacy Notice, our Retention and Destruction Policy and in line with the requirements of the **Data Protection Legislation**.

10. Review

10.1 This policy is reviewed every year by the trust. We will monitor the application and outcomes of this policy to ensure it is working effectively.