



## **Support staff capability policy**

### **Introduction**

This policy is written to fulfil the Governing Body's obligation to establish procedures for dealing with a lack of capability on the part of all support staff at the school which is set out within the School Staffing (England) Regulations 2009. It takes into account the provisions of the 2009 ACAS statutory code of practice on discipline and grievance.

It applies to all support staff employed by the school, with the exception of support staff serving a probationary period, for which separate procedures apply. In such cases the capability and induction processes will proceed concurrently.

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## **1 Guiding principles**

The Governing Body is committed to ensuring that high levels of performance are maintained within the school and recognises that the majority of staff members meet the standards required of them. The Governing Body expects managers to lead by example, demonstrating a high level of competence, judgement and integrity, promoting effective working practices and supporting and encouraging school staff when difficulties arise. In return, the Governing Body expects all employees to strive for high personal standards of performance whilst being realistic and honest about difficulties they are encountering, and to aim for continuous improvement both through their personal endeavours and through training and development opportunities which arise. By and large, many minor issues relating to performance can and will be dealt with through open, constructive dialogue between manager and employee. Sometimes, however, an individual's performance may not reach an acceptable level, or, because of particular circumstances, performance may suddenly decrease. In addressing circumstances where a staff member falls short of the standard required, the Governing Body will seek to ensure, through the application of this procedure, that a solution-led approach to capability issues is found, focussing first on support and improvement. However, under no circumstances will the Governing Body allow the education of pupils to be put at risk for any extended period; the procedure therefore provides for dismissal where performance fails to improve within the given timescales.

- 1.1 The Headteacher and the Governing Body are responsible for ensuring that:
- all support staff have a clear understanding of the standards of performance required of them as a member of school staff;
  - as part of day-to-day good management practice, line managers will address minor capability issues promptly without recourse to the capability procedure;
  - managers will investigate the causes of poor work performance, particularly where there has been a sudden deterioration, and will gather information or examples related to the areas of concern to aid the discussion with the individual;
  - employees will be informed which aspects of their work performance are causing concern and will, except in cases of gross incompetence, be given an opportunity to improve before formal action is taken;
  - employees will be informed of their right to be accompanied at any formal meetings arranged under the procedure and of their right to appeal against any formal decision made;
  - employees will be made aware of the existence of this procedure and be informed where they can locate a copy;
  - managers with responsibility for overseeing the performance of others receive adequate training and support to fulfil their role;
  - reasonable adjustments to the procedure will be made when required to accommodate the needs of an employee with a disability.

### **Roles and responsibilities**

- 1.2 References to 'the manager' throughout this document refer to the employee's performance manager, which may be a line manager or the Headteacher as appropriate. Action taken at the formal stage of the procedure must be taken by a senior manager or the Headteacher. Dismissal decisions will be made by the Headteacher or governing body in accordance with the scheme of delegation in place.

## **2 Purpose and scope**

The purpose of the procedure is to ensure that, where concerns about an individual's work performance arise, all the circumstances are appropriately investigated and the individual given appropriate support and an opportunity to improve before any formal sanctions are applied. The overriding aim of the procedure is to encourage staff to achieve and maintain acceptable standards of performance.

2.1 This procedure is not applicable to:

- concerns about poor attendance as a result of ill-health absence;
- concerns about an individual's conduct, rather than competence;
- instances of very serious error, omission or negligence which the Governing Body and/or local authority could not risk occurring again.

In these circumstances the absence management or disciplinary procedures will apply as appropriate.

2.2 The capability procedure will be applied fairly and consistently to all support staff employed at the school regardless of gender, race, colour, national or ethnic origin, nationality, marital/civil partnership status, disability, sexual orientation, gender reassignment, age, religion, pregnancy/maternity, trade union membership/non membership, duration of contract (permanent/temporary/fixed-term status) or number of hours worked.

2.3 Due regard should also be had to the management guidance on the application of this procedure.

2.4 Any documents must be stored confidentially. The emphasis should be on protecting the school and the employee. All parties involved in a capability matter are obliged to maintain confidentiality.

## **3 Preliminary Stage: Addressing initial concerns**

3.1 The Governing Body recognises that, in many cases involving minor or early-stage concerns about work performance, the matter is best addressed and resolved discreetly through discussion between the manager and the employee concerned. These initial discussions should take place within the context of performance management. Managers have the right and responsibility to bring such concerns to an employee's attention where there is evidence that an employee is not working at the expected standard.

3.2 As part of the meeting, the manager should:

- explain how the individual's performance is falling short of the standard expected;
- explore the issues with the employee;
- check with the employee whether there are any medical reasons or personal issues which may be affecting his/her performance at work and consult OHWS if necessary;
- agree clear targets or aims for improvement as well as an action plan specifying the support to be provided to enable him/her to reach the standards required;
- arrange a further meeting to review this, the timescale for which will depend on the nature and extent of the concerns and the logistics of providing support.

3.3 During the period of review, the manager will meet with the employee to provide feedback on progress. During this time, if there is no obvious improvement and concerns remain, the



employee should be warned that the capability procedure could be invoked if sufficient improvement is not made.

3.4 At the end of the review period, the manager should meet with the employee again and confirm:

- that performance has reached the standard required and, subject to maintenance of this and appropriate informal monitoring, no further action will be taken; or;
- that performance has shown some signs of improvement, to the extent that, whilst some concerns remain, support and monitoring will remain within the general context of performance management for the time being; or;
- that performance remains unsatisfactory, and the matter will be considered under the capability procedure, for which a formal meeting must be separately convened\* and that the performance management policy will not apply whilst the capability procedure is invoked.

3.5 Written notes of meetings, evidence of performance, action plans and outcomes will be made during the process of addressing initial concerns to act as a point of reference for manager and employee.

## **4 Formal Capability Procedure: Stage 1 meeting**

### **Preparing for the meeting**

4.1 Where the support provided at the preliminary stage has failed to bring about a sufficient improvement the formal capability procedure will be applied. The Headteacher (or another senior manager, as appropriate) will arrange a Formal Stage 1 meeting under the capability procedure, giving at least 5 working days' notice in writing, confirming the following to the employee:

- the evidence of unsatisfactory performance;
- a copy of the action plan from the preliminary stage showing the support that has been provided;
- the date, time and location of the meeting, and the names of those who will be present;
- the possible consequences for the employee in terms of the capability procedure;
- copies of any written evidence which the manager intends to refer to at the meeting;
- confirmation of the right to be accompanied by a trade union representative or work colleague and to state his/her case and present evidence at the meeting;
- a copy of the Support Staff Capability Policy and Procedure.

### **Conducting the meeting**

4.2 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. In order to establish whether or not action under the capability procedure is warranted, the Headteacher or senior manager will use the meeting to:

- reiterate the performance concerns, outline the support that has been provided and present any supporting evidence;
- provide the employee and/or his/her representative with the opportunity to state their case and respond to the concerns raised including providing suggestions for specific or additional support;
- establish any special circumstances which should be taken into account during decision-making.

- 4.3 The meeting should be adjourned if new facts come to light which require further investigation or if a third party needs to be consulted.

**After the meeting**

- 4.4 After the meeting, the Headteacher or senior manager will consider the evidence and discussion which took place and decide on an appropriate course of action. Where new information or the employee's explanation suggests that the matter is not as serious as it first seemed, the Headteacher or senior manager may decide not to proceed with the capability procedure. In this instance, performance will continue to be monitored in accordance with normal performance management procedures.

- 4.5 Where a formal warning is deemed appropriate, the Headteacher or senior manager will proceed to consider the level of warning, as follows:

**a. First Written Warning**

Where concerns about performance are confirmed, the usual response will be to give the employee a first written warning. Continued unsatisfactory performance during the period the warning is 'live' (normally 12 months) would usually result in a final written warning being issued. A first written warning will invoke an initial assessment period of 6 weeks.

**b. Final Written Warning**

In cases of particularly serious concern, where the lack of capability is so severe that an immediate improvement must be secured to ensure the safety and wellbeing of others, it is possible to move directly to a final written warning. Personnel advice will be sought when such an outcome is being considered. A further period of monitoring and support will usually be equivalent to 6 weeks, however this may be shortened where there are serious concerns. A final written warning will usually remain 'live' for 12 months.

- 4.6 The employee should be notified of the decision as soon as possible, and in any event this should be confirmed in writing within 5 working days, including:

- what, if any, formal action is being taken, including an explanation of the decision;
- what improvements in performance are required and the consequences of a failure to improve;
- how long the warning (if any) will remain current;
- the right to appeal against any formal sanction by confirming this in writing to the Clerk to the Governing Body within 5 working days of receipt of the letter and outlining the grounds for appeal.

- 4.7 In addition, the employee must be given an improvement plan for the assessment period, either at the same time as the letter, or shortly afterwards. This improvement plan will set out:

- the improvement required and the timescale for achieving this (including targets where appropriate);
- a review date;
- details of any support, which should be commensurate with concerns, including any training or coaching that the employer will provide, how the support will be provided and the timescale for each strand of support;
- how performance will be monitored over the review period.

- 4.8 Where performance has reached the appropriate standard by the end of the review period a meeting should be convened at which the employee is informed that the capability procedure is now ending and confirming any ongoing arrangements for monitoring and support.

## **5 Formal Capability Procedure: Stage 2 meeting**

- 5.1 If either:
- following the review period at Formal Stage 1, where satisfactory performance has still not been reached or maintained, or
  - at any point during the review period the standard of performance decreases further, the Headteacher or senior manager will invite the employee to attend a Formal Stage 2 capability meeting giving at least 5 working days' notice. The contents of the invitation letter, documentation provided and the conduct of the meeting will be the same as the process at stage 1. In the case of more serious concerns about performance emerging since stage 1, evidence of the matters causing such concern should also be included in the documentation circulated prior to the meeting. If, as a result of a final written warning being issued at stage 1, dismissal is a possible outcome, the matter should instead be referred directly to stage 3.
- 5.2 Where a formal warning is deemed appropriate, the Headteacher or senior manager will proceed to consider the level of warning as follows:
- Final Written Warning
- If the Headteacher/senior manager deems that further action under the capability procedure is required as a result of insufficient progress being made, this will usually take the form of a final written warning. The length of the next assessment period will depend on how long the employee has already been subject to the procedure (the maximum timescale for improvement is two terms from entry). A further period of monitoring and support will usually be equivalent to 6 weeks, however this may be shortened where there are serious concerns. A final written warning will usually remain 'live' for 12 months.
- 5.3 The outcome of the hearing should be notified to the employee in writing in accordance with the procedure detailed under stage 1, including details of the right of appeal. The support plan, revised as appropriate, should also be reissued at the same time, or shortly after.

## **6 Formal Capability Procedure: Capability hearing**

Delegated powers: References within this section to the Governors' Disciplinary/Capability Panel may be read as references to the Headteacher in schools where the governing body has formally delegated certain powers to dismiss. However, where the Headteacher has been responsible for the capability review process up until this point, a consideration of dismissal will be referred to a panel of governors to ensure impartiality.

### **Preparing for the meeting**

- 6.1 Where performance has still not improved to a satisfactory standard, following a stage 1 and stage 2 meeting (or following a stage 1 meeting where the shortened procedure has been implemented) and where dismissal is a possible outcome of a further formal meeting to consider the employee's performance, the matter should be referred to the Governors' Disciplinary/Capability Panel who will convene a formal hearing to consider the case.
- 6.2 The following information should be provided to the employee in writing at least 10 working days' in advance:
- information about the nature of unsatisfactory performance, and detail of the process and support to date;
  - the date, time and location of the meeting, and the names of those who will be present;
  - the possible consequences for the employee in terms of the capability procedure, including the fact that dismissal could be an outcome;



- copies of any relevant reports, written evidence or statements;
- names of witnesses to be called;
- confirmation of the right to be accompanied by a trade union representative or work colleague and to state his/her case and present evidence at the meeting (employees will be required to provide copies of any written evidence he/she intends to present and names of any witnesses at least 5 working days before the hearing);
- a copy of the capability procedure (where this has not already been given);
- a copy of the procedure for the hearing.

6.3 An officer of the authority will attend any proceedings in community or voluntary controlled schools where a possible outcome could be dismissal (and, if accorded advisory rights, in foundation and voluntary aided schools). Personnel advice will be called upon in all cases.

### **Conducting the meeting**

6.4 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. The order of proceedings which will usually be followed at the hearing can be found at Appendix 1.

6.5 The meeting may be adjourned if, in the view of the Chair of the Panel, the meeting cannot continue until either new evidence is investigated or a witness who is absent is called.

### **After the meeting**

6.6 After the meeting, the Governors' Disciplinary/Capability Panel will consider all the evidence presented to them and, on the balance of probabilities, whether the concerns about the individual's performance are justified and, if so, what appropriate outcome should be reached.

6.7 In reaching the decision on appropriate action, consideration should be given to:

- whether there is evidence that the concerns are justified;
- the degree of underperformance, the employee's capability record (including current warnings) and the opportunities to improve already presented to the individual;
- whether the support to be made available to the individual was delivered, and whether it was appropriate to the circumstances;
- whether standards of other employees are acceptable, and that this employee is not being unfairly singled out;
- any special circumstances which might make it appropriate to adjust the severity of the formal action;
- the likely impact on the school (and particularly on pupils) of a decision to allow the individual to remain in post;
- whether the proposed course of action is reasonable in view of all the circumstances.

6.8 Where dismissal is being considered, the panel should first discount options which could be put forward as an alternative to dismissal, such as demotion or transfer to another post which more closely matches the employee's capabilities.

6.9 The employee should be notified of the decision as soon as possible, and in any event this should be confirmed in writing within 5 working days, including:

- whether the panel has found that there is a case to answer;
- what, if any, formal action is being taken, including an explanation of the decision;



- where the outcome does not result in a decision to dismiss but where there are still concerns, what actions, improvements and learner outcomes are needed to obviate the need for a further Stage 3 meeting;
- how long the warning (if any) will remain current;
- the right to appeal against any formal action, by confirming this in writing to the Clerk to the Governing Body within 5 working days of receipt of the letter and outlining the grounds for appeal.

6.10 A decision to dismiss must be with notice, although in most cases the employee will not be expected to attend work. In community schools and voluntary controlled schools, any decision to dismiss must be confirmed in writing to the local authority (via the Schools Personnel Team), as it is the local authority which is responsible for issuing a notice of termination of contract within 14 days of such a notification.

## **7 Formal Capability Procedure: Appeals**

### **Right of appeal**

7.1 There shall be a right of appeal against any decision to impose a formal warning or other formal sanction as a result of action taken by the manager, Headteacher or by governors. In exercising this right, an employee must confirm the grounds on which he/she is making the appeal. The process of assessing and reviewing capability in accordance with the formal procedure will continue pending the outcome of any appeal.

7.2 Appeals against warnings may be heard by the Headteacher or alternatively one or more governors, in accordance with the scheme of delegation in place and bearing in mind the need to secure impartiality at every stage of the process. The Headteacher will not hear an appeal against his/her own decision. Appeals against dismissal will always be heard by the Governors' Appeals Panel. References to the Governors' Appeals Panel hereafter may therefore be interpreted accordingly, depending on the nature of the appeal.

### **Preparing for the meeting**

7.3 The appeal shall be heard by a panel of governors who have had no previous involvement in the case. It should be arranged to take place as soon as practicable, allowing the employee 10 working days' notice of the date. The progress of the capability procedure will continue pending the outcome of any appeal.

7.4 Any additional documents to be used at the hearing (e.g. new statements or evidence) or details of any third parties to be called should be exchanged by the parties no later than 2 working days before the hearing to allow for preparation time.

### **Conducting the meeting**

7.5 The purpose of the meeting is for the Governors' Appeals Panel to consider the grounds for appeal and to review the fairness of the outcome of the original meeting. New evidence may be considered at the appeals stage, but no additional grounds for action against the employee may be introduced.

### **After the meeting**

7.6 Within 5 working days of the appeal hearing, the employee should be notified of the outcome and any actions which have been determined. There is no further right of appeal.





- 7.7 In community and voluntary controlled schools, the local authority is responsible for confirming the termination of contract with the employee. The local authority must, therefore, be kept informed about the outcomes of appeals against dismissal.
- 7.8 If a dismissed employee is reinstated on appeal, his/her salary will be back-paid to the date of the original termination, minus any monies already paid in respect of notice.

## **8 Considerations and specific circumstances**

### **Scheduling formal meetings**

- 8.1 Meetings should be held during the employee's usual working day. Other arrangements can be made, by mutual agreement. School closure periods will generally result in a suspension of the procedure.
- 8.2 The employee is expected to make every effort to attend at the required time. If this presents serious difficulties, or the employee's representative is unable to attend, an alternative date may be suggested by the employee. This will not be unreasonably declined, provided it does not result in an unacceptable delay (usually a delay of no more than 5 working days will be acceptable). Any subsequent postponements, or a failure of the employee to turn up to a scheduled meeting on more than one occasion, is likely to result in the formal capability meeting proceeding and being decided on the basis of written evidence.

### **Formal action against Trade Union representatives**

- 8.3 Where a formal investigation or capability meeting is being arranged in relation to a trade union representative employed by the school, the case must first be discussed with a full-time official from the appropriate union (after obtaining the employee's agreement).

### **Suspension**

- 8.4 There may be exceptional instances where suspension is necessary while investigations into concerns about competence are carried out. Suspension is not an assumption of wrongdoing and is not considered a formal sanction. It is most likely to be deemed appropriate in cases where incompetence could put other parties or property at risk. The provisions relating to suspension (including consideration of alternatives to suspension) contained within the disciplinary procedure will apply in such circumstances.

### **Ill-health absence**

- 8.5 The ill-health absence of an employee during the procedure will not result in any delay to review meetings or hearings, beyond what is reasonable. One attempt to reschedule the hearing will be made where ill-health absence intervenes and it should be explained to the employee that if he/she is still unable to attend on the rescheduled date that the meeting will proceed in his/her absence. The employee will be offered the option of making a written submission and/or asking their representative to attend the rescheduled meeting to make oral submissions and to question witnesses on their behalf before a final decision is reached.
- 8.6 Absence which appears to have been triggered by the instigation of the capability procedure, particularly if it is likely to be long-term, will usually be referred immediately to Occupational Health to obtain advice on the prognosis and the likelihood that the employee will be able to return to employment.



**Procedure to be used where there is no delegation to the Governing Body**

- 8.7 In circumstances where there is no Governing Body or where delegation has been removed, the following variations to the procedure shall apply.
- Where there is no Headteacher, the role of the Headteacher or Governors Panel in the procedure will be taken by the Director of the Children and Young People’s Service or an officer nominated by him/her.
  - Appeals will be heard by the Assistant Director for School’s and Learning or an officer nominated by him/her. The officer will have no previous involvement in the case and will, where practicable, be senior to the officer who first heard the matter.

**Grievances**

8.8 Grievances can run concurrently with any formal procedure which includes an appeals mechanism, but with regard to process matters rather than the substantive matters which can be addressed by rights of appeal. This should not cause delay to the formal procedure.

**Record keeping**

- 8.9 A record of documentation relating to capability hearings and appeals will be retained on file, although live warnings will be disregarded after the appropriate period.
- 8.10 Records will be treated as confidential and kept in accordance with the principles of the Data Protection Act 1998.

**9 Review**

This policy will be reviewed by the Standards committee every 3 years or earlier if required.

Date of policy: FEBRUARY 2018

Policy ratified: ..... (Signature) ..... (Date)

Review due: FEBRUARY 2021  
(This policy is currently under review by the LA.)



## **10 Capability Hearing : Order of proceedings**

The conduct of the hearing will be the responsibility of the Chair which can be either the Headteacher where they have full delegation or a member of the Panel of Governors.

The order of proceedings can be adjusted to suit the circumstances if necessary, in consultation with the parties, providing the overall principles, aimed at securing a fair hearing, are adhered to.

- a. The Headteacher/chair introduces all those present and outlines purpose of hearing and any procedural arrangements.
- b. The nominated manager/school representative (supported as necessary by his/her HR Adviser, if any) presents the case against the employee.
- c. The employee and/or representative) have the opportunity to question the nominated manager/school representative.
- d. The Headteacher/panel has the opportunity to question the nominated manager/school representative.
- e. The nominated manager/school representative may call witnesses.
- f. The employee (and/or representative) has the opportunity to question each witness.
- g. The Headteacher/panel may question each witness.
- h. The employee (and/or representative) presents his/her case.
- i. The nominated manager/school representative has the opportunity to question the employee.
- j. The Headteacher/panel has the opportunity to question the employee.
- k. The employee (and/or representative) may call witnesses.
- l. The nominated manager/school representative has the opportunity to question each witness.
- m. The Headteacher/panel has the opportunity to question each witness.
- n. The nominated manager/school representative has the opportunity to summarise the case
- o. The employee (and/or representative) is invited to make any closing remarks.
- p. All persons withdraw, other than the Headteacher/panel, the note-taker and any professional advisers present, while the Headteacher/panel deliberates.
- q. The parties may be either released or recalled to clarify any points of uncertainty.
- r. Where the Headteacher/panel cannot reach a decision before the parties are released, the parties will agree how the decision will be communicated. In any event, formal notification of the outcome will be sent in writing within 5 working days of the hearing.



## **11 Disciplinary Appeal Hearing: Order of proceedings**

The conduct of the hearing will be the responsibility of one of the members of the Governors' Appeals Panel, elected to act as its Chair.

The order of proceedings can be adjusted to suit the circumstances if necessary, in consultation with the parties, providing the overall principles, aimed at securing a fair hearing, are adhered to.

- a. Chair introduces all those present and outlines purpose of hearing and any procedural arrangements.
- b. The employee (and/or representative) presents his/her case.
- c. The Headteacher and/ or chair from the 1st Hearing have the opportunity to question the employee.
- d. The Panel have the opportunity to question the employee.
- e. The Headteacher/or chair from the 1st Hearing the case for action against the employee and the reasons for the level of action taken.
- f. The employee (and/or representative) has the opportunity to question the Headteacher/spokesperson.
- g. The Panel have the opportunity to question the Headteacher/spokesperson.
- h. The Headteacher// or chair from the 1st Hearing to summarise the case.
- i. The employee (and/or representative) is invited to summarise the case and make any closing remarks.
- j. All persons withdraw, other than the Panel, the Clerk and any professional advisers present, while the Panel deliberates.
- k. The parties may be either released or recalled to clarify any points of uncertainty.
- l. Where the Panel cannot reach a decision before the parties are released, the parties will agree how the decision will be communicated. In any event, formal notification of the outcome will be sent in writing within 5 working days of the hearing.