



Support Staff Capability Policy

Produced by The School Employment Advisory Team

Tel: 0151 233 3901
www.ednet.co.uk

Note: In this document, any reference to the terms "Governor" or "Governing Body" shall be interpreted to also mean "Trustee" or "Board of Trustees," unless the context specifically indicates otherwise.

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Support Staff Capability [Performance] Policy and Procedure

This policy will be reviewed every 2 years.

1. Purpose

- 1.1 School Staffing Regulations 2009 require Governing Bodies to have procedures for dealing with any lack of Capability of their Employees.
- 1.2 This procedure applies only to school support staff about whose performance evidence has arisen of serious concerns. These concerns may be identified by the member of staff's appraiser under the School Appraisal Policy and referred to the head teacher following insufficient improvement being made via informal interventions under that policy. If serious concerns are identified by other means, they must be referred to the member of staff's appraiser, so that they can be suitably addressed and managed with the individual.
- 1.3 Good management, clear expectations and appropriate support will often address weaknesses in performance. Early identification of concerns will help to avoid the need for recourse to the Support Staff Capability [Performance] Policy and in most cases an improvement may be achieved with support / training requirements being met and attention [see section 8 School Policy for Appraising Support Staff Performance].
- 1.4 Before commencing the Capability [Performance] Policy, Head teachers, Governors or managers should examine at this stage the possibility that the member of staff's professional performance may be affected by ill health or some external influence or concern. If this is the case the matter should be dealt with under the appropriate procedure before any consideration is given to Capability [Performance] procedure.
- 1.5 A member of staff has the right to be represented at any stage of the Capability [Performance] Procedure either by their professional association, trade union representative / official or work colleague.
- 1.6 Members of staff have the right to appeal against any sanction issued at any stage of the procedure.
- 1.7 Where formal capability [performance] action is to be taken against an employee who is a recognised trade union official (including safety and learning representatives) no action will be taken until the circumstances of the case have been discussed with a full time officer of the trade union concerned.

2. Identification of Capability [performance] issues

2.1 Where a member of staff's underperformance gives cause for concern, the head teacher or other line manager should investigate and collect evidence. Once the facts are gathered and the seriousness of the problem established the school should consider one of the following options:

- No further action required
- Initial support / coaching
- Training

2.2 Support

2.2.1 Support and informal coaching should aim to encourage and help the member of staff to improve. It should be conducted discreetly. Explanations should be considered carefully and the matter dropped if it becomes evident that no further action is required.

2.2.2 The member of staff must be informed what is required, how performance will be reviewed, the review period and that the formal procedure will commence if there is no improvement. Support should not go on too long. A note of any support should be kept for reference.

2.2.3 Discussion must not harass the member of staff or turn into a formal interview. If more serious concerns arise, or if the member of staff expresses discontent, or indifference to the support, the formal procedure should commence to deal with the matter in a more structured and objective manner.

2.2.4 A period of time should be agreed with the employee when sustained improvement could reasonably be expected to occur. The timetable will depend on the circumstances of the individual case and should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

2.2.5 After a period of review involving observation and assessment a firm conclusion should be reached. The options at this point will be either: -

- No further action required
- Extend the period of support where there are clear extenuating circumstances
- Move to formal capability process set out below.

3. Formal Capability Meeting – Stage 1

3.1 At least five working days' notice will be given of the Formal Capability meeting. The notification will contain sufficient information and evidence about the concerns about performance and their possible

consequences to enable the member of staff to prepare to answer the case at a Formal Capability Meeting.

- 3.2 The member of staff must be given copies of any written evidence that will be referred to during the Capability [Performance] process.
- 3.3 The member of staff may be accompanied by a work colleague or trade union representative / official.
- 3.4 This meeting is intended to establish the facts. It will be conducted by the head teacher or other nominated manager who may be accompanied by a nominated HR Advisor. The meeting allows the member of staff, accompanied by a work colleague or trade union representative / official, 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.
- 3.5 Once the facts and any additional information have been considered there are two initial options:
 - 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 informal support. In such cases, the capability procedure will come to an end.
 - The person conducting the meeting may 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.
- 3.6 During the meeting, or at any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
 - identify the professional shortcomings, with reference to evidence e.g. appraisal reports, formal letters of complaint [this list is not exhaustive]
 - give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures - this may include the setting of new objectives focused on the specific weaknesses that need to be addressed
 - identify 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 member of staff 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 and should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- consider issuing a formal warning to the member of staff and indicate that failure to improve within the set period could ultimately lead to dismissal.
- advise the member of staff of their right to appeal the warning if issued

3.7 Notes will be taken of the capability meeting and a copy will be sent to the member of staff. Where a warning is issued, the member of staff 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.

4. Monitoring and review period following a formal capability meeting

4.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the period, the member of staff will be invited to a Formal Review meeting.

5. Formal Review Meeting – Stage 2

5.1 As with formal capability meetings, at least five working days' notice will be given of the meeting, and the member of staff will be advised of their right to be accompanied by a work colleague or trade union representative / official. The person conducting the meeting may be accompanied by an HR advisor.

5.2 If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease.

5.3 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. The timetable should be reasonable and will depend on the circumstances of the individual case.

- If no, or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning and be given a final review period in which to improve performance. The timetable will depend on the circumstances of the individual case.
- 5.4 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 from the school's employment. The member of staff should also be given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

6. Decision Meeting – Stage 3

- 6.1 If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the member of staff should be dismissed or required to cease working at the school.¹
- 6.2. As with Formal Capability meetings and Formal Review meetings, at least five working days' notice will be given to the member of staff of the Decision Meeting and the member of staff will be advised of their right to be accompanied by a work colleague or a trade union representative / official.
- 6.3 The Decision Meeting will be before a Governors Committee consisting of at least three members of the School Governing Body. The Committee may be supported by an LA or HR advisor and will be held in accordance with the school hearing protocol.
- 6.4 Before any decision to dismiss is made, the school may wish to discuss the matter with the local authority.
- 6.5 In the event of a decision to dismiss the member of staff, they 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.

7. Decision to dismiss

- 7.1 Governors are required to establish a relevant committee to decide if members of staff should no longer work at the school. Such a committee can be made up of: -
- the headteacher (if they have not been previously involved in the management of the matter) OR

- a committee of one or more governors OR
- one or more governors acting with the headteacher (where the head teacher has not been previously involved in the management of the matter)

8. Dismissal in a Community School

- 8.1 In community schools, once a decision has been made that the member of staff should no longer work at the school, the Local Authority must be notified of the decision and the reasons for it. The Local Authority will then take steps to confirm the dismissal.

9. Appeal

- 9.1 If a member of staff 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 days of receiving the decision, setting out at the same time the grounds for appeal.
- 9.2 Where monitoring of a member of support staff's performance would be continuing through a Review period or Final review period, this should not be halted whilst an appeal is pending.
- 9.3 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and the right to be accompanied by a work colleague or trade union representative / official 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 member of staff.
- 9.4 The appeal will be dealt with impartially and by governors who have not previously been involved in the case. The member of staff will be informed in writing of the results of the appeal hearing within 5 working days.

10. Grievances

- 10.1 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.

11. Sickness

- 11.1 If 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 policy.

- 11.2 Immediate consideration should be given to referral to Occupational Health to assess the member of staff's health and fitness for continued monitoring or formal procedures, and fitness to attend work and workplace meetings. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence. In all cases it is important to give due consideration to any recommendations made by OH.
- 11.3 Sickness absence should not necessarily delay any part of the formal capability process and reasonable steps should be taken to enable the member of staff to attend meetings.
- 11.4 Where the member of staff is unable to attend and is unlikely to be well enough to attend in the foreseeable future (ie. within 28 days), they should be informed that the meeting will progress in their absence and a full account of the meeting, and its outcomes should be sent to the member of staff as soon as possible.

1. *In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated:*
to the head teacher,
to one or more governors,
or to one or more governors acting with the head teacher.

In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above, but it is the local authority (as the employer) that actually dismisses staff.

2. *For Voluntary Aided, Foundation and Foundation Special Schools the Governing Body (or person or people to whom the power to dismiss has been delegated) will dismiss the member of staff.*