



Capability Policy

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Introduction

Schools and local authorities must stay within the legal framework set out in relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).

Schools and local authorities must have a policy covering all staff which deals with lack of capability.

This policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. Capability procedures apply to employees about whose performance there are serious concerns that the Staff Performance Management Policy has been unable to address.

Policy for appraising support staff performance and dealing with capability issues

The Board of Trustees of the Aletheia Anglican Academies Trust (AAAT) adopted this policy in January 2021 (to be adopted by each Trust school) and it supersedes any previous policy for appraising support staff performance and dealing with capability issues.

The policy will be reviewed every 2 years, or earlier if there is a need, in conjunction with union representatives, but the CEO of the Trust will monitor the operation and effectiveness of each school's (within the AAAT) appraisal arrangements on a regular basis.

Purpose

This policy sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.

Application of the policy

The policy sets out the formal capability procedure which applies to staff about whose performance there are serious concerns that the Staff Performance Management Policy has been unable to address.

Capability Procedure

Please note:

This is a model policy for the effective management of staff in schools or academies where there are concerns regarding individual performance that appear to be attributable to skills, qualifications or competence that are below the required standard for the school/academy.

This is a model policy that has been developed in partnership between key advisors from SPS and KCC's Education, Learning and Skills directorate. All trade unions and professional associations recognised by KCC have been consulted in the development of this policy.

Consequently, schools and academies considering using this model policy should ensure there is adequate consultation with their own school-based trade union representatives.

The LA/KCC requires Community and Voluntary Controlled schools to use either this model policy or the national model developed and available from the DfE. It is expected that Foundation schools will not significantly depart from either of these documents. However, there are other model documents available to schools and academies to use as a reference in the drafting of their policy, for example from some trade unions/professional associations. HR consultants will be able to fully support and advise a school or an academy irrespective of the policy/procedure that is adopted.

Introduction

Good management with clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review and monitoring in line with the Staff Performance Management Policy will help avoid the need for formal procedures.

In many cases, sufficient improvement can be achieved through positive intervention and appropriate support within informal discussions. It is therefore important that all reasonable support, including advice, coaching and further training, where appropriate, should be explored via informal standard setting discussions (para 3.1) before resorting to the formal procedure (para 4).

However, if it is reasonably believed that either the use of the informal discussions is unlikely to have the desired impact on performance, and that the employee has already been made aware of the concerns from discussions in the appraisal process, or that the level of performance is very serious with regard to pupil progress or/and behaviour, then the process can move direct to the formal procedure as set out in paragraph 4 below.

Aim and Scope of the Procedure

The primary aim of this procedure is to assist and support employees whose performance is causing concern to attain the standards required. This is essential in the provision of the highest standards of education and care of children/students.

However, this procedure also enables the Academy to take essential management action, including dismissal, within reasonable timescales in respect of employees whose performance continues to fall short of the required standards.

This procedure does not apply to staff during probationary periods as any performance (or conduct) concerns should be dealt with as part of the supervision and induction for new staff.

Early Action to Address Performance Concerns

Informal Standard Setting Discussion

Appraisers have a responsibility to maintain professional contact and dialogue with their Appraisees through the staff performance management process, to clarify expectations, discuss performance issues and to provide support including coaching, advice and (where relevant) observation with constructive feedback.

Where the performance of an Appraisee continues to give concern and the professional dialogue does not appear to be effective, then the discussion should move to a Standard Setting meeting.

This remains an informal part of the procedure, although the meeting will be structured, and a note of the discussion and outcome will be recorded. The purpose of the meeting is to explore reasons for the performance concerns, discuss targets for improvement alongside a programme of support.

The meeting may be conducted by the Appraiser, or if appropriate the matter may be referred to a more senior member of the School's Leadership Team/Headteacher.

The employee should be given reasonable written notice, good practice being up to five working days' notice, of the meeting to prepare and give them the opportunity obtain someone suitable such as a workplace colleague or trade union representative to accompany him/her to the meeting if required.

The standard setting meeting must address the following issues clearly and fully:

- a) The areas of performance that are causing concern and the evidence or information that leads to this view.
- b) The expected standards of performance.
- c) An opportunity for the employee to respond or to provide any relevant information relating to the concerns.
- d) Clear targets to establish whether the required standards have been achieved.
- e) Ongoing support, advice, guidance and appropriate training.
- f) Timescales in which performance is expected to improve.
- g) Arrangements for the monitoring/assessment of performance.
- h) Arrangements including a date for assessment at the end of the review period.

Targets set within this discussion should be proportionate in number, reasonable in expectations with clear success criteria and a focus on development.

It is essential that the employee is made fully aware that the process could move to the formal procedure should performance not improve to the required standard. In the light of this potential implication it could be of benefit to both manager/appraiser and employee to permit the involvement of a workplace colleague or trade union representative. However, this would not impact upon the status or purpose of the meeting.

The timescale for the review period will need to reflect all the circumstances of the situation.

The employee will be given a copy of the notes of the meeting and this will include a record of the arrangements set out in a) to h) above.

Early Stage Review

At the end of this informal review period a meeting to discuss progress will be held with the employee. This meeting will best be conducted by the person who was involved in the standard setting discussion, where possible.

The employee will be informed that

- a) His/her performance has improved to an acceptable standard and there will be no further requirement for monitoring against the standards set. It may, however, be advisable that ad hoc, informal checking continues for an agreed period of time to ensure that the improved performance is truly embedded, or
- b) There has been some improvement and it is believed that a short extension of the informal standard setting process should be sufficient to enable the employee to reach the standards expected, or
- c) His/her performance has not reached an acceptable standard and it is considered appropriate to move into the formal procedure. This will require a formal capability meeting to be arranged.

Formal Capability Procedure

Formal Capability Meeting

At least ten working days' notice will be given of the formal capability meeting.

The written notification will contain sufficient information about the concerns regarding the performance (initially addressed with the employee through the usual performance management process) 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 (unless previously provided); the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a workplace colleague or trade union representative. If the trade union representative is not able to attend a meeting on the date given, an alternative date will be arranged within 5 working days of the original meeting date.

This meeting is intended to establish the evidence regarding the performance concerns. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher (for other staff).

The meeting allows the employee to respond to the 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 formally and that it would be more appropriate to continue to address the remaining concerns through the appraisal process or through other informal means. In such cases, the formal capability procedure will come to an end.

The person conducting the meeting may also adjourn the meeting if appropriate, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information such as new evidence indicating that personal circumstances could be a significant contributory factor. 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:

- a) Identify the professional shortcomings, for example if an employee is not meeting one or more of the relevant professional standards.
- b) 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 a re-focus of the objectives 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).
- c) Explain the support that will be available to help the employee improve their performance.

- d) 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. *(It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place).*
- e) Warn the employee that the outcome may be a first formal warning and that failure to improve within the set period could lead to dismissal, and, in very serious cases, the first warning given may be a final warning that failure to improve within the set period could lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the employee, normally within 5 working days. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above, given information about the timing and handling of the review stage, and the procedure and time limits for appealing against the warning. The exact date after which the warning will expire will be specified.

The employee should be provided with a clear, written action plan to confirm the objectives, the support being provided and the arrangements for monitoring, review and success criteria.

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 employee will be invited to a further formal review meeting.

Formal review meeting

As with formal capability meetings, at least five working days' notice will be given and the written 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 workplace colleague, a trade union official or a trade union representative who has been certified by their union as being competent. If the trade union representative is not able to attend a meeting on the date given, an alternative date will be arranged within 5 working days of the original meeting date. The school may also invite attendance of a professional officer to advise the panel on details of the procedure.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start. It may be necessary to revise appraisal objectives to ensure achievability within the remaining time period.

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.

Notes will be taken of formal meetings and a copy sent to the member of staff within 10 working days. The final written warning will be consistent with 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 ten working days' notice will be given and the written 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, a trade union official, or a trade union representative who has been certified by their union as being competent. If the trade union representative is not able to attend a meeting on the date given, an alternative date will be arranged within 5 working days of the original meeting date. The school may also invite attendance of a professional officer to advise the panel on details of the procedure.

The evidence of underperformance will be considered and the employee and/or their representative will be able to offer explanation and/or refutation of the allegations, the outcome of which will either be the conclusion of the procedure, further support, or move to dismissal.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start. It may be appropriate to provide a short period of informal monitoring outside of the formal process to ensure that the improved performance is fully embedded.

If performance remains unsatisfactory and the evidence is that the employee is unlikely to attain the standard expected within a reasonable timescale, then a decision or recommendation to the Governing Body will be made that the employee should be dismissed or required to cease working at the school.

The power to dismiss staff in this school rests with the Headteacher.

The employee will be informed as soon as possible in writing within five working days of the decision meeting 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.

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 ten working days of the receipt of the decision letter, setting out in full the grounds for appeal.

Appeals will be heard without unreasonable delay, usually within ten working days of receipt of appeal notice and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a workplace colleague or a trade union representative 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 and unless there are exceptional circumstances this will be within ten working days.

In the event the employee does appeal against a warning, the arrangements, preparation and hearing of the appeal will not interrupt the timescales and/or capability process unless the appeal decision leads to the matter being reconsidered.

Sickness

It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the school.

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to procedures used by the school to terminate the employment of the employee on the grounds of ill health.

If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting s/he may present a written submission for consideration and/or be represented by a companion in her/his absence.

Confidentiality

The capability process will be treated with confidentiality.

Consistency of Treatment and Fairness

The Board of Trustees is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Grievances

Where a member of staff employee raises a grievance during the capability process, the capability process 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.