

Support Staff Capability Policy and Procedure

November

2022

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1. Introduction

1.1 Aim

- 1.1.1 The aim of the Capability Policy and Procedure is to enable employees to perform effectively in their role and to ensure that cases of poor performance are dealt with fairly and consistently, with the prime objective of improving an individual's performance to the required level.

1.2 Scope and Application

- 1.1.2 The capability policy and procedure applies to all school support staff employees with the exception of those staff who are in their probationary period.
- 1.1.3 For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, knowledge and responsibilities.
- 1.1.4 Employees who are within their probation period will be covered by the Schools Probation Policy and Procedure.

2. Responsibilities

- 2.1 Employees are responsible for performing their duties to an acceptable standard and participating in appropriate training and development.
- 2.2 Headteacher/line managers are responsible for ensuring that:
- The standards of performance required and the arrangements for monitoring and review are clear to all employees
 - Ensuring that employees receive appropriate training and development
 - Arrangements for dealing with incapability for work and poor performance are brought to the attention of all staff
 - They take all reasonable measures to promote capability of employees under their responsibility
 - Occupational health advice is sought, where relevant to a case of incapacity for work
 - Where disability related issues emerge they are addressed in a positive way and, where necessary, the requirements to make reasonable adjustments are met
 - Full and accurate records are kept of all formal meetings
- 2.3 Schools Human Resources (HR) are responsible for:
- Providing advice and support throughout the process
 - Monitoring the application of the procedure, reporting trends and non-compliance to the chair of governors and the Director of Children's Services (where applicable) or other appropriate body.
- 2.4 Governing boards are responsible for:
The Governing Board is responsible for:
- Approving this policy
 - Ensuring that the policy is complied with
 - Participating in the process when appropriate, e.g. Appointing panel for decision meeting.



3. Principles

3.1 Process

- 3.1.1 Capability procedures are designed around support mechanisms to assist employees to achieve the desired levels of performance.
- 3.1.2 It is part of the normal day to day responsibilities of management to inform staff of concerns about standards of performance and where these are not speedily resolved they should be addressed via the appraisal process.
- 3.1.3 When issues arise it is important that the headteacher/line manager identify the performance gap and investigate the cause or causes. Once the reason for the gap has been discovered actions can be agreed with the employee to assist them to bridge the gap or work towards other acceptable solutions. Headteachers/line managers and employees should regularly discuss performance against agreed targets and objectives, identifying areas of concern either to the employee, the headteacher/line manager or both and identifying strategies for improvement.
- 3.1.4 Headteachers/line managers need to be clear about the objectives and targets they believe should be achieved by staff, such targets and objectives should always be reasonable and realistic, and employees need to understand what is required of them in terms of their work or attendance and the standards to be met.
- 3.1.5 Ideally, capability concerns should be resolved through informal discussions between the headteacher/line manager and the employee. The formal stages of the procedure should only be used when a headteacher/line manager can demonstrate that informal action has not achieved the desired objective.
- 3.1.6 In very limited and exceptional circumstances, the headteacher/line manager may proceed direct to the formal stages of this procedure. Circumstances where this may occur will only include instances of severe/gross incompetence and which would have a serious and direct impact on the health and safety of clients, service users or colleagues or where the education of pupils is at risk. Headteachers/line managers should seek advice and support from Schools Human Resources.
- 3.1.7 Performance matters should be dealt with sensitively and with respect for the privacy of individuals involved. All employees and governors must treat as confidential an information communicated to them in connection with a matter which is subject to this procedure.

3.2 Equalities Issues

- 3.2.1 Where the employee has a disability, the headteacher/line manager will discuss any reasonable adjustments to support them in their work and ensure that these are made. Schools' Human Resources and other appropriate specialist advice should be sought and the employee should be advised of their right to seek advice and support from their trade union.
- 3.2.2 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 working

arrangements, including changing duties or providing additional equipment or training. Adjustments to this procedure may also be considered in appropriate cases.

- 3.2.3 An employee who wishes to notify of a medical condition, or discuss reasonable adjustments, should contact their line manager or School's HR.

3.3 Ill Health

- 3.3.1 An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance at work. The process for managing long-term periods of sickness absence (4 weeks or more) and managing repeated short-term absence is set out in the Schools Sickness Policy and Procedure.
- 3.3.2 There may be situations where the Sickness and Capability procedures, may be required to run in parallel.

3.4 Standards of Work

- 3.4.1 Headteachers/line managers are responsible for establishing the required reasonable standards of work expected from employees, whilst employees are responsible for understanding and meeting those standards. Headteachers/line managers should support and assist employees to achieve these standards, providing necessary training and support.

3.5 Investigation of Concerns

- 3.5.1 If an employee is failing to achieve the expected standard of work, the headteacher/line manager should investigate the problem in an attempt to identify the causes for the poor performance, and work with the employee to improve performance providing appropriate support and guidance, and interventions where needed.

3.6 Representation

- 3.6.1 Employees may be accompanied at any formal stage of this procedure by a work colleague, or a trade union representative.

4. Informal Stage – Stage 1

- 4.1 Employees are responsible for performing their duties to an acceptable standard and participating in appropriate training and development.
- 4.2 All employees benefit from continuous feedback, reassurance and recognition. In line with the School's performance review process, headteachers/line managers must hold regular one-to-one/supervision review meetings with employees whom they line manage. These meetings should primarily focus on the employee's progress against their agreed work plan and set objectives. The headteacher/line manager should discuss any achievements and review any development that the employee has undertaken.
- 4.3 The headteacher/line manager should discuss with the employee any concerns they have regarding the employee's performance. When discussing issues of poor performance the headteacher/line manager should:
- Discuss fully their concerns regarding performance, explaining to the employee exactly how they are falling short of the required standard



- Ask the employee for their own views
 - Seek any other information to gain a fuller understanding of the reasons for the performance concerns, including medical advice, if appropriate
 - Confirm to the employee what will happen next and when the employee's performance will be reviewed
 - Consider with the employee what support or actions may assist them to achieve the required level of performance
 - Warn the employee of the possible consequences of continued poor performance
- 4.4 The headteacher/line manager must confirm these discussions in writing to the employee, confirming what is required to improve performance, how performance will be monitored and reviewed, the review period and warn the employee that formal action will commence if there is no improvement. The headteacher/line manager should set a date for a follow up meeting and/or arrange further support and training.
- 4.5 When discussing concerns of poor performance headteachers/line managers need to be specific about their concerns and must demonstrate evidence and/or give examples to support their assertions. Headteachers/line managers should be guided by the aim of this procedure set out above which is to “enable employees to perform effectively in their role” i.e. ensuring that a suitable programme of support is put in place, which may include more regular supervision and/or formal training or coaching.
- 4.6 At the follow up meeting, the headteacher/line manager and the employee will discuss any progress/lack of progress the employee has made. The headteacher/line manager should seek as much input from the employee as possible, inviting the employee to fully discuss the concerns raised and their own views on their progress.
- 4.7 If after the discussion, the headteacher/line manager is satisfied that the required standards have been achieved, no further action will be taken. However, the headteacher/line manager will continue to monitor the performance in accordance with the performance review process. However, where an employee fails to demonstrate that their performance is improving, the headteacher/line manager should invite the employee, giving at least 5 working days' notice, to attend a formal review meeting to discuss their performance.

5. Formal Stage – Stage 2

- 5.1 Where an employee fails to demonstrate that their performance is improving, the headteacher/line manager will write to invite them, giving at least 5 working days' notice, to attend a formal review meeting to discuss their performance. The letter inviting the employee to attend a formal review meeting will detail the purpose for the meeting, the headteacher/line manager's concerns and advise the employee of their right to be accompanied by a trade union representative or work colleague. The headteacher/line manager may be accompanied by a Schools HR Officer.
- 5.2 At the meeting, the employee will be informed of:
- Why their performance is considered unsatisfactory and the possible causes of the poor performance



- What further actions can be taken and agree a structured improvement plan based on realistic set targets and timescales
 - Obtain the employee's commitment to reaching an effective level of performance
- 5.3 Once action under the formal procedure is started, the maximum period for improvement is two months. In exceptional circumstances if an employee's lack of capability is placing pupils' education seriously at risk, the period may be shorter. Headteachers/line managers should seek advice from Schools HR.
- 5.4 Details of the formal review and any decisions discussed will be confirmed to the employee in writing. The headteacher/line manager will also confirm the time period for the employee to reach a satisfactory standard. The letter will serve as a formal written warning advising the employee that their employment may be at risk if their performance does not improve within the set period and any other reasonable action that will be taken.
- 5.5 At the end of the set period, the employee should be invited to a meeting to discuss whether the employee has reached the satisfactory standard. The headteacher/line manager may inform the employee whether or not their performance is satisfactory. If the performance is satisfactory, the employee should be informed of the need to maintain satisfactory performance and that any further cause of concern in the next 12 months may result in the headteacher/line manager progressing to stage 3 of the formal procedure. If the employee's performance is not satisfactory, the headteacher/line manager may extend the review period or refer the employee to a formal panel (under stage 3).

6. Formal Stage – Stage 3

6.1 Capability Hearing

- 6.1.1 If performance issues have been addressed at Stage 2 and, the employee is still unable to achieve the required standard of work then the headteacher/line manager should progress the case to the formal stage capability hearing.
- 6.1.2 The capability panel will be conducted by a governor panel. References to 'governor panel' in this document will be a panel of three governors. The governing board will select three governors and will nominate one of them to be chair of the panel. The chair of the panel shall either be trained or suitably experienced in chairing formal panels. No governor who has had prior involvement in a particular case should sit on the panel. If there are insufficient suitable governors available from the school's governing board, then governors from the governing boards of other schools may be appointed to the panel. The panel will make decisions by majority vote, although the chair or the panel may make decisions in relation to procedure for example postponements. If a Governor is not a member of the panel that Governor will be given brief information only about the matter, they will not be given full details in case the Governor is needed as a future decision maker in the matter. It is usually good practice for the Chair of Governors not to be on the Decision Panel, so that the Chair of Governors may sit on the appeal panel if the matter proceeds to appeal.



6.2 Notification of Formal Hearing

6.2.1 The headteacher/line manager is responsible for convening and managing the arrangements for all meetings held under this procedure, except Appeal Hearings. The headteacher/line manager should write to the employee instructing him or her to attend a capability hearing.

The letter instructing the employee to attend the capability hearing should:

- Give the employee at least 5 working days' written notice of the hearing
- Set out the date, time and place of hearing and the names of the members of the panel
- Should describe the nature of the capability issue and action taken so far
- Where possible, be accompanied by the documents that the headteacher/line manager will present at the hearing, although these can be sent under separate cover provided they arrive no later than 5 working days before the hearing. Documents to be considered at a formal hearing should be set out in a logical order, indexed and paginated, with a written introduction including any conclusions and recommendations for the panel.
- Advise the employee of the right to be represented by a work colleague or trade union representative
- Provide a copy of the Support Staff Capability Policy & Procedure
- Advise the employee that they need to provide any documentation/names of witnesses at least 2 full working days before the hearing.
- Explain that dismissal could be an outcome

6.3 Attendance at a formal hearing

6.3.1 The following may attend a capability hearing:

- The employee
- The employee's representative
- The panel of 3 governors who will hear the case
- A school's HR representative who shall act as an impartial advisor to the panel
- The headteacher/line manager (the presenting manager) who may be accompanied by a school's HR officer
- A note taker
- Any other member of staff invited by the panel to advise or give information
- Any other employee called as a witness, who shall be present only to give their evidence.

6.4 Request for postponement

6.4.1 At the request of the employee the hearing may be postponed on one occasion. The reasons for the postponement must be explained to the chair of the panel, who will decide whether to agree or not to the postponement. If agreed, the employee must give an alternative date, no more than 5 working days after the original date for the hearing.

6.4.2 The hearing will not normally be re-arranged more than once. Further requests for postponement of a hearing will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the hearing may proceed in the absence of the employee.

6.5 Order of Business

6.5.1 The order of business at a capability hearing will normally be:

- Introductions



- Presentation by management, which may include the calling of witnesses, who may give their evidence, be cross-examined by the employee/representative and questioned by the panel
- Questions to management by employee/representative and the panel
- Presentation by the employee/representative, which may include the calling of witnesses, who may give their evidence, be cross examined by management and questioned by the panel
- Questions to the employee/representative by management and the panel
- Summing up by the management representative
- Summing up by the employee/representative
- Decision of the panel
- Panel's decision to be conveyed in writing

6.6 Outcomes at a formal capability hearing

6.6.1 The panel may decide one or more of the following:

- No action – employee to return to appraisal process
- Further monitoring and/or training (with a date for review)
- Final written warning
- Dismissal with notice
- Dismissal with pay in lieu of notice
- By mutual agreement, transfer to another post within the school usually of a lower grade without salary protection. The panel will need to identify a suitable post before making this recommendation
- Any other reasonable action

6.6.2 If a Capability panel decide that further monitoring /training is required then a review date should be set by the panel.

6.6.3 If a Capability Hearing previously issued a final written warning and the employee has not achieved the required standards by the review date agreed by the panel, then the headteacher/line manager should refer the case back to the same panel for further consideration. The employee may be dismissed at the follow up hearing.

6.6.4 Where the employee has achieved the required standards by the agreed review date, the headteacher/line manager must in writing inform the employee, the chair of the capability panel and Schools HR.

6.7 Dismissal decisions & ratification

6.7.1 If the outcome of the formal capability meeting is recommendation for dismissal then the chair of the panel will advise Schools' HR of the panel's recommendation and the Local Authority will arrange for dismissal to be confirmed in writing within 14 days¹ (the employee

¹ School Staffing (England) Regulations 2009. Regulation 20 – for Community, Voluntary Controlled, Community Special and Maintained Nursery Schools the recommendations to dismiss must be notified to the Local Authority. Within 14 days of being notified the Local Authority's Director of Education and Learning or Director of Children's Services must terminate the contract of employment with or without notice. Regulation 32 – in relation to Foundation, Voluntary Aided and Foundation Special Schools the same procedure as



will receive the panel's decision and separate dismissal letter from the Local Authority).

6.7.2 The Governing Body of Voluntary Aided and Foundation Schools can make the decision to dismiss and to ratify a dismissal decision. Dismissals and notice periods are effective from the date of notification of the dismissal decision.

6.7.3 Confirmation of termination of employment will be provided in writing to the employee along with details of their right of appeal against termination of employment.

6.8 Notification of decision

6.8.1 The decision of the Panel will be notified to the employee in writing as soon as practicable after the meeting, not normally to exceed 5 working days.

6.8.2 The decision will include:

- A description of the capability issue
- The employee's response and views
- The findings of the panel
- The right of appeal

6.9 Record of proceedings

6.9.1 It is important to keep written records during the entire capability process. Records must include:

- The capability complaint against the employee;
- The employee's defence and response;
- Findings made and actions taken;
- The reason for actions taken;
- Whether an appeal was lodged;
- The outcome of the appeal;
- Any grievances raised during the capability procedure; and
- Subsequent developments.

6.9.2 Copies of meeting records should be taken and if requested, a copy provided to the employee within 10 working days of the hearing.

7. Appeal

7.1 Lodging an appeal

7.1.1 The employee can appeal against formal action taken under stage 3 of this procedure. The purpose of the appeal is to review the decision taken by the capability panel, not to re-hear the case.

7.2 Common appeal conditions

7.2.1 The grounds of appeal should relate to one or more of the following:

maintained schools applies to Local Authority employees who are being dismissed, otherwise the decision to dismiss sits with the governing board.



a) The procedure

An appeal can be lodged on the grounds that the capability procedure was applied unfairly or inaccurately.

b) The facts

An appeal can be lodged where the employee believes that the facts of the case did not support the decision made; that the facts considered were not relevant; that the facts were not substantiated; or where there are new facts/evidence which need to be considered that has come to light subsequent to the hearing

c) The decision

An appeal can be lodged where the employee feels that the sanction received is unreasonable in view of the circumstances and mitigation offered by the employee.

7.2.2 The appeal must be made in writing, to the Chair of Governors/Clerk to the Governing Body (as appropriate), within 10 working days of the date of the letter confirming of the decision. The notice of appeal must clearly indicate the grounds of appeal.

7.2.3 The appeal will normally be heard within 20 working days from receipt of the appeal letter.

7.2.4 The Chair of Governors or his or her nominee shall arrange for the appeal to be heard by a panel of at least 3 governors who have not had any previous involvement in the case (the appeal panel will be formed following same principles as the panel for the decision hearing – see above).

7.2.5 The employee will be informed of the right to be accompanied by either a work colleague or trade union representative.

7.2.6 The arrangements for an appeal hearing at the earlier stages of this process will not delay meetings that are required to monitor and review performance and the timescales that have been set for improvement.

7.2.7 The purpose of an appeal is to review the decision taken by the panel and not to rehear the case.

7.2.8 The appellant will be given 5 working days' written notice of the appeal hearing along with any documents which management will present at the appeal. The appellant must provide their own documents within 2 working days of the appeal hearing.

7.2.9 Order of Business for Capability Appeal Hearing – refer to decision hearing above and note that the sequence of business is changed in that it is the employee and then the Chair of the decision meeting, in that order to make submissions to the appeal panel.

7.2.10 The panel will review whether the original decision was reasonable having reviewed the grounds for appeal. The Appeal Panel shall go into as much detail as they consider necessary in order to give a fair hearing within the grounds of the appeal.

7.2.11 The decision at appeal shall be either to uphold the original decision of the formal decision meeting, to issue a lesser sanction, or to overturn the original decision and impose no



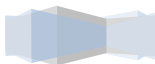
sanction. This decision shall be final and will be confirmed in writing, not normally to exceed 5 working days.

7.2.12 If the employee is successful at appeal they will be re-instated. It is, however, possible that an appeal might be concluded within the notice period.

7.2.13 Notes shall be taken at an appeal hearing and if requested a copy provided to the appellant within 10 working days of the appeal hearing.

8. Approval and Variation Process

8.1 Where the School/Council wishes to amend this policy, it will consult with the relevant trade unions with a view to reaching agreement over the proposed amendment(s). This policy may be amended by agreement with the relevant trade unions at any time. Where agreement has not been reached with the relevant trade unions arising from consultations, the School/Council reserves the right to implement its proposed amendment(s) by giving one month's notice to employees of its proposal(s).



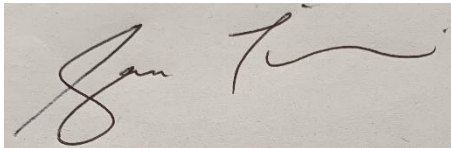
This Policy is approved and signed by:



Director, Education & Learning

Name: Abrilli Phillip

Date: November 2022



On behalf of Trade Unions: Sara Tomlinson Lambeth Trade Union's Joint Education Secretary

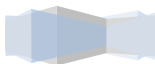
Name: Sara Tomlinson

Date: November 2022

Chair of Governors of School or Federation

Name:

Date:



Appendix 1 – Version Details

	Version date: November 2022
Section	Summary of changes from 2012 version
Section 2.4	Added role of governing board
Section 6.1.2	Information about composition of governor panels
Section 6.6.1	Increased the range of potential outcomes at formal capability hearing
All	Changed some headings
All	Re-ordered to make more chronological
All	Changed terminology re ‘manager’
All	Statutory references updated and moved to footnote rather than body of document.
	Revised order to improve chronological flow
	Formatting changes
	Minor changes
Appendix 1	Added a version history section

Date of agreement with Trade Unions: November 2022

Scheduled review date: 5 years from agreement with Trade Unions.

