
Support Staff Capability – Procedure for Angel Road Federation of Schools

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1. Introduction and Scope

- 1.1 This procedure applies to all support staff employees in school with only one exception: Support staff working their probationary period would see concerns around their performance addressed through P113a Probation: model procedure for schools document (available on Schools PeopleNet).
- 1.2 In most cases, concerns over support staff performance will be successfully addressed through day to day management support and appraisal (using P324 and G324a the model Support Staff Appraisal Scheme Policy and Guidance). In more serious cases, or where day to day management support fail to bring about the required improvement in performance, this Support Staff Capability Procedure should be followed.
- 1.3 This procedure must not be used to address capability concerns with teaching staff. For teachers, concerns should be addressed through P324a Teacher Performance Management Policy and, beyond that, P329b Teacher Capability Procedure.
- 1.4 Throughout this procedure reference to companion means trade union representative or work colleague.

2. Identifying the problem

- 2.1 In the majority of cases, an informal capability stage (also referred to as counselling) will be appropriate before considering use of the formal procedure. Where an employee may be under-performing, the Headteacher or other line manager should investigate whether this is the case and, if so, collect evidence.
- 1.2 Informal discussions should take place in order to determine that there is a problem and exactly what it is. There can be many sources of information and these will differ depending on the role undertaken by the employee.
- 1.3 Once the facts are gathered and the seriousness of the problem established there are three initial options:

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- drop the matter (no case to answer or trivial)
- arrange informal capability support – counselling (see 3 below)
- arrange a formal capability interview – where there is insufficient acceptance of the problems or the problems are already serious (see 4 below).

3. Informal Capability Support (Counselling)

- 3.1 For the purposes of this procedure, “counselling” refers to a period of discussion and support with an employee to assist him/her in bringing about improvement where concerns about performance have been established. Counselling should aim to encourage and help the employee improve. It should be conducted discreetly. Consideration should be given to any professional, personal or domestic difficulty which could be hindering the employee’s performance. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer. The employee must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement. The identified areas for improvement, targets, agreed support and monitoring should be written into F329 *Personal Action Plan*. It is desirable that the Headteacher or line manager and employee both sign the action plan.
- 3.2 Counselling should not go on too long. There are no hard and fast rules about timescales at the counselling stage and the length of time deemed appropriate by the Headteacher may be influenced by a number of factors. It will, however, be important to ensure that lengthy periods without improvement are avoided. It should allow sufficient time for less serious problems to be resolved but, if it is not effective in bringing about required improvement in a relatively short timeframe, the formal procedure should be used.
- 3.3 A written note of any counselling under this procedure should be kept for reference.
- 3.4 Discussion must not harass the employee or turn into a formal interview. If more serious concerns arise, or if the employee expresses discontent or indifference to the counselling/informal coaching, this should be discussed with the employee before an appropriate next step is determined. Helping the employee understand the situation they are in, particularly by sharing evidence and clarifying the extent of the gap between their current performance and where they need to be, can ensure co-operation on their part. If the employee’s discontent displays itself through a lack of willingness to co-operate with the process, or if more serious concerns indeed arise during the counselling stage, the formal procedure can be commenced to deal with the matter in a more structured way.
- 3.5 After a period of review involving observation and assessment, a firm conclusion should be reached. The options will be either to:
- drop the matter; or
 - continue under the counselling stage if good progress has been made under the counselling stage but not quite to the required level (ie where the Headteacher is

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confident that with a little more support the problems can be overcome in a short timescale); or

- convene a formal interview.

4. Formal stage

4.1 A formal capability interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way or to give more intensive support and monitoring where the counselling stage has failed to bring about the required improvement. It allows the employee to prepare a response to allegations about performance and make a case in the company of a companion.

4.2 The employee should be invited to the formal capability interview with at least five working days notice (or seven consecutive days out of term time). The interview will be chaired by the Headteacher. The invitation should be in writing, making clear the purpose of the interview, confirming the date, time and venue, and giving details of others who will be in attendance (eg witnesses, HR Consultant). The right of the employee to be accompanied by a companion must be included.

4.3 Where representation has been notified, the companion will be consulted on the date and time of the formal capability interview although the Headteacher should not allow undue delay in starting the formal process. The statutory guidance suggests that the process should not be delayed by more than five days for the purposes of securing representation but there should be recognition of the difficulties associated with co-ordinating diaries.

4.4 A copy of this capability procedure must be attached to the invitation along with a capability report prepared by the Headteacher. The report must include:

- description of the problem(s)
- information about action already taken (where appropriate)
- reference to and copies of other evidence being used to confirm problems, eg reports of observations.

The invitation must be handed to the employee by the Headteacher or posted by recorded delivery.

An extra copy of the invitation, report and other documentation must be provided to the employee for the purposes of passing to their companion. By agreement with the employee, the copy may be posted direct to his/her companion.

4.5 The format of the formal capability interview should normally be as follows:

- The Headteacher introduces those present and confirms the purpose of the meeting.
- The Headteacher outlines the review report and highlights the reasons and evidence for concerns, calling witnesses where appropriate. Written evidence from witnesses should be provided to the employee in advance of the interview.

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- The employee and/or their companion may ask questions of the Headteacher and any witnesses.
- The Headteacher's adviser may ask questions.
- The employee and/or their companion will present their case and will be able to refer to written evidence and/or call on witnesses of their own. Prior notice must be given and written evidence circulated before the review meeting.
- The Headteacher and his/her adviser can ask questions.
- Where appropriate, the Headteacher and employee and/or companion may summarise their cases.
- The Headteacher will adjourn the interview while s/he decides what action to take. The employee and his/her companion must be informed as soon as possible, and no later than five days after the review meeting. Normally, information will be given after the adjournment.

4.6 The interview may provide new information or put a different slant on evidence already collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

4.7 There are four options at the formal capability interview:

- drop the matter
- counselling/informal coaching (except where already undertaken without improvement)
- oral or first written warning
- final written warning.

The first two are only relevant where new information, a different slant on the information collected, or further investigation suggests the matter is not as serious as it first seemed.

The third and fourth options are relevant in any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the level of seriousness of the problem:

- An **oral warning** should not normally be necessary in cases where counselling has already taken place.
- If performance is unsatisfactory a **first written warning** will normally be the appropriate step (which will invoke an assessment period of up to two terms).
- In cases of particularly serious concern, perhaps where the finances or security of the school are in jeopardy, it is possible to move directly to a **final written warning** (which will invoke an assessment period not normally exceeding four weeks). In these extreme cases it will be important to consider (before a decision is made about issuing a final warning) how the employee's performance has dipped significantly if, for example, they have recently passed a probationary period or had a successful appraisal assessment.

4.8 Any decision on the level of warning should be made after all the facts and any representations from the employee and/or companion have been considered. The

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Headteacher should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.

- 4.9 Where a formal warning is issued, the Headteacher should use the remainder of the meeting to agree an action plan to:
- identify the professional shortcomings
 - give clear guidance on the improved standard of performance needed to end the capability procedure
 - explain the support that will be available, and how performance will be monitored over the following weeks
 - depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting
 - make it clearly understood that failure to improve may ultimately lead to dismissal.
- 4.10 A letter, along with the agreed action plan, should be sent to the employee immediately after the formal interview recording the outcome, the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage and the appeals process. The letter must state that if there is insufficient improvement in the capabilities of the employee by the end of the stated period, this could lead to further action under the formal procedure including dismissal for lack of capability.
- 4.11 Any appeal against a warning must be submitted within five working days (or seven consecutive days out of term time), and ideally heard within ten working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.
- 4.12 First assessment stage

Weeks one to 20 – Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee. This will include the need for regular, perhaps monthly, feedback to the employee on their progress so s/he can be clear on whether they are making the improvements required. It would be helpful to the process if such regular feedback is through a written note detailing where improvement has been made, and where progress still needs to be made.

If at any point during this stage the circumstances suggest that a more serious problem exists, the Headteacher may take the decision to bring forward the planned (20 week) evaluation meeting to consider whether a final written warning should be issued sooner. If a final warning is given following such a brought forward evaluation meeting, there will normally be a maximum period of four weeks allowed following that evaluation meeting before a final evaluation meeting is held.

Week 20 – Evaluation meeting to assess performance over the previous weeks.

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The evaluation meeting should be convened by the Headteacher by circulating, at least five working days (or seven consecutive days out of term time) in advance, a summary report which contains:

- the original target setting letter
- details of help and guidance provided and results of monitoring
- copies of evidence from observations and other relevant evidence
- a clear assessment by the Headteacher of the progress made
- confirmation of the employee's right to be accompanied by a companion.

If it is found that the level of performance has been satisfactory and confidence that it can be sustained, the capability procedure can end with a confirmation letter from the Headteacher.

If it is found that performance continues to be unsatisfactory a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support will continue for a further (four week) period. Arrangements for this should be explained at the meeting. The decision and main points of the meeting must be recorded in a letter to the employee. The employee must be told clearly that failure to achieve an acceptable standard by the final evaluation meeting, with confidence that it can be sustained, may result in dismissal. Any appeal against the final written warning must be made within five working days (or seven consecutive days out of term time), and ideally heard within ten working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

4.13 Appeals against warnings

Any appeal submitted by an employee regarding a first written warning or final written warning will normally be heard by a panel of three governors (the Appeal Committee) although this can be reduced to a minimum of two where a governing body has a shortage of eligible governors.

Notice of at least five working days (or seven consecutive days out of term time) must be given for an Appeal Committee hearing.

The procedure P329a *Procedure at staff dismissal and appeal committee hearings* should be followed for appeal hearings.

The outcome of the Appeal Committee hearing must be confirmed in writing to the employee within five working days.

4.14 Second assessment stage

Weeks 20 – 24 – Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

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Week 24 – Final evaluation meeting to report the assessment of performance over the previous weeks.

The final evaluation meeting should be convened by the Headteacher by circulating, at least five working days (or seven consecutive days out of term time) in advance, a summary report which contains:

- the original target setting letter
- details of help and guidance provided and results of monitoring
- copies of evidence from observations and other relevant evidence
- a clear assessment by the Headteacher of the progress made
- confirmation of the employee's right to be accompanied by a companion.

If it is found that performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here.

If it is found that performance is unsatisfactory the employee should be told that the matter will be referred to the governing body's Staff Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known), should be recorded in a letter to the employee.

4.15 Staff Dismissal Committee stage

The governing body should set up a Staff Dismissal Committee, normally consisting of three governors (although this can be reduced to a minimum of two where a governing body has a shortage of eligible governors).

The Headteacher should notify the employee of the hearing by issuing a formal call up letter and accompanying summary report which contains:

- information about support provided under the counselling stage of the procedure
- the target setting letter issued at the formal capability interview and all paperwork used in the formal process since that interview including details of help and guidance provided, results of monitoring, copies of evidence from observations and other relevant evidence
- a clear assessment by the Headteacher of the progress made.

Notice of at least five working days (or seven consecutive days out of term time) must be given along with confirmation of the employee's right to be accompanied by a companion.

A copy of the information sent to the employee should be passed to each member of the Staff Dismissal Committee and their adviser in advance of the hearing.

The Committee must hear the representations and recommendations brought by the Headteacher conducting the capability evaluation, and any representations that the employee may wish to make. The procedure for a capability hearing, P329a *Procedure at staff dismissal and appeal committee hearings*, should be followed.

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The outcome of the hearing must be confirmed in writing to the employee within five working days. If the outcome is dismissal with notice, the letter confirming the outcome must include the giving of notice (and employment end date) and right of appeal.

4.16 Dismissal Appeal Committee stage

If the employee appeals the decision of the Staff Dismissal Committee, the governing body should set up a Dismissal Appeal Committee to hear the appeal.

The paperwork referred to in 4.10 should also be provided when calling an appeal hearing along with a copy of the outcome statement from the Staff Dismissal Committee hearing. Again, the employee should be given five working days notice along with confirmation of their right to be accompanied by a companion.

A copy of the information sent to the employee should be passed to each member of the Appeal Committee and their adviser in advance of the hearing.

The Appeal Committee should consist of three governors. This can be reduced to two where a school has a shortage of eligible governors but should never be less than the number used for the Staff Dismissal Committee.

None of the governors on the Staff Dismissal Committee should be on the Dismissal Appeal Committee.

Notice of at least five working days (or seven consecutive days out of term time) must be given for an Appeal Committee hearing.

The outcome of the hearing must be confirmed in writing to the employee within five working days. If the Appeal Committee confirms dismissal, the employee has no further right of appeal.

5. Post dismissal actions

- 5.1 There is currently no requirement to make referrals to other agencies where a member of support staff is dismissed for lack of capability. The only exception to this is likely to be where the capability of an individual is such that it may make him/her unsuitable for work with children (in which case a referral to the ISA may be appropriate). The HR Consultant supporting the school through the dismissal process will give appropriate advice.