

Conatus Federation

Capability Policy for Support Staff

Introduction

The governing body and the Head of School have a responsibility to help and encourage all staff in the schools to maximise their performance, to ensure the highest level of education provision to children. This procedure is therefore designed to provide a fair and consistent method of achieving this requirement and dealing with poor performance and/or the failure to achieve the expected professional standard. This procedure applies to all school support staff with the exception of:

- Teachers employed under the School Teachers Pay & Condition Document
- Newly qualified teachers during their period of induction;
- Casual or temporary employees appointed for less than 13 weeks
- Support staff during their probationary period
- Agency workers
- Where the employee is incapable of performing their duties as a result of sickness or injury the School's Management of Sickness Absence policy will apply.

This document sets out the procedure to be followed where a member of the schools' support staff consistently or seriously fails to meet the work standards required to perform the duties of their post. This procedure should be read in conjunction with Management Guidance on Capability for School Staff (written by Schools' HR). Where issues of performance arise, these will be addressed at the earliest possible stage. Problems will normally be dealt with in the normal course of management of staff or through supervisory meetings and informal discussion, but if satisfactory improvement is not achieved within a reasonable timescale, not normally exceeding six weeks, then the matter will be dealt with under the formal stages of this procedure.

Once at the formal stage the expectation is that the capability process should not normally exceed two terms. Copies of documentation, from the informal stage onwards, should be kept on file. Any member of staff being taken through the capability procedure will be excluded from the performance management process. Governors / Head of School can delegate the responsibility for taking formal action regarding poor performance in accordance with the procedure, up until any hearing to consider dismissal. Any reference to governors/ Head of School, shall be construed as relating equally to their representatives, up until any hearing to consider dismissal.

If an employee has specific needs relating to a disability then reasonable adjustments will be considered to assist them participating in any meetings/hearings. Where the employee is incapable of performing their duties as a result of absence due to sickness or injury the Attendance Management policy will apply. If the employee is at work but unable to perform their full duties due to a health condition then managers will be expected to consider reasonable workplace adjustments before continuing with the capability procedure if the performance remains unsatisfactory or where the individual is unable to fulfil their role due to their medical condition. Governors/ Head of School will seek the support of the Schools' HR Team as appropriate.

Supervisory Meetings and Informal Discussion

Head of School must ensure that employees are aware of the standards of work required of them and how their performance will be assessed. Clear performance standards must be set and monitored as part of the appropriate performance management scheme for reviewing employee performance and development and as part of normal supervision meetings.

Head of School will provide appropriate supervision, training and support to assist employees to reach the required standard of performance. Initially, any problems should be discussed with the employee on an informal basis. However, if an employee seriously or consistently fails to meet the required standard then this must be discussed in the normal supervisory meetings and as part any formal review of the employee's performance. Head of School must set robust and achievable targets, with agreed outcomes for the employee to meet and specifying a time period within which they must be met, not normally exceeding six weeks.

The targets must be reasonable and measurable. A record of these discussions must be kept and a copy provided to the employee concerned. At this stage, Head of School should attempt to explore if there are any underlying reasons for the employee's poor performance. For example; the employee may require training or could have a health issue. There could be issues, which have arisen concerning the employee's personal life, which are adversely affecting their performance at work. Head of School will discuss problems in a constructive and sympathetic way, and to identify appropriate action to remedy the situation.

Only when attempts to resolve problems through any normal performance management meetings, supervisory meetings and discussions have been unsuccessful should the matter be progressed to the formal stage of the procedure. Where the matter is to be progressed through the formal stages of this procedure then the Head of school should write to the employee arranging a formal capability review meeting as set out below. It will normally be necessary to follow all stages of the formal procedure as set out below. However, in serious and exceptional cases of very unsatisfactory performance or where it is considered that pupils' education is in jeopardy, then it may be appropriate to move straight to Stage 2.

An employee's health condition should not prevent the Head of School from taking steps to manage capability. Absence due to sickness or injury will be subject to the school's Attendance Management Policy. However, the capability procedure will continue upon the employee's return to work or where the employee has remained in work.

The Head of School should make an assessment to identify whether there are any adjustments or support which would assist the employee to regain an effective level of performance. In the case of disability, the Equality Act (2010) places a legal obligation on the employer to identify and put in place reasonable adjustments. An assessment should happen as part of the return to work process, or, if the employee remains at work, as soon as there is evidence of the health condition impacting upon performance. Adjustments may be temporary to deal with an acute health issue or longer term to deal with a chronic illness. They may include revised working hours, amended duties or workplace adaptations. Adjustments must be kept under regular review.

Occupational Health can provide advice on the efficacy of the adjustments in alleviating any disadvantage faced by the employee. But ultimately it is for the Head of School to decide on what adjustments and timeframe are reasonable in line with the needs of the school. Management action to manage capability should continue as normal once any agreed adjustments are in place. A period of time may be required to allow agreed adjustments to become effective.

Where adjustments have proven ineffective in improving performance, or where it is not possible to make adjustments which would enable the employee to undertake their role effectively, the Head of School will take a supportive approach and explore with the employee options such as redeployment to a more suitable role, a permanent change in working pattern or ill health retirement. This scenario may arise in cases of degenerative disease or significant deterioration in health. However, if all reasonable options have been exhausted and performance remains below the required standard then it may be appropriate to move straight to Stage 2 of the procedure. Advice from Schools' HR and an up to date OH review must be obtained before proceeding straight to Stage 2.

Stage 1

Formal Capability Meeting

The Head of School will arrange a formal capability review meeting. The letter notifying the employee of the meeting will provide them with at least 5 working days' notice of the date of the meeting, explain why their performance is considered unsatisfactory and that a formal warning may be issued. The employee will also be notified of their right to be accompanied by a trade union representative or another employee.

The meeting should be conducted by the Head of School. They must:

- Explain how the employee is failing to perform/has failed to perform to the standard expected.
- Ask the employee if there are any reasons why performance is below the standard expected.

- Consider any explanations given, and whether any other information is required before making a decision. In the case of ill health, the need to take advice from Occupational Health regarding current health, adjustments, likelihood of and timescale for an improvement in health. This may also include consideration of redeployment or ill health retirement.
- Consider any training or support needs and how these can be met.
- Adjourn the meeting in order to decide whether a Written Warning should be issued.

Where the Head of School decides a Written Warning should be issued to the employee, he will inform the employee of the decision at the conclusion of the hearing, and/or in writing within five working days of the meeting. A letter must be sent to the employee setting out:

- The matters discussed at the meeting.
- The decision taken i.e. that a written warning has been given.
- Robust and achievable targets, with agreed outcomes for the employee to meet and specifying a time period within which they must be met, not normally exceeding six weeks.
- The targets must be reasonable and measurable.
- The time and dates of observations and progressions meeting and when the next capability review will take place.
- That the Written Warning will remain in force for a period of 12 months and that performance will continue to be monitored.
- That unless performance improves to a satisfactory standard within the period set, the employee may be subject to further action.
- The employee's right to appeal against the decision.

The Formal minutes taken at all of the hearings must be shared with all parties present, including the employee and their representative within two weeks of the date of the hearing.

Copies of the minutes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the minutes they should make their comments in writing which should then be retained and noted for the records.

Stage 2

Formal Review Meeting

Where an employee's performance continues to be unsatisfactory following a formal Written Warning, or in the case of very unsatisfactory performance and/or where it is judged that pupils' education is in jeopardy, the Head of School will arrange a Stage 2 formal capability review meeting.

The letter notifying the employee of the meeting will provide them with at least five working days' notice of the date of the meeting; explain why their performance is or continues to be unsatisfactory and that a final written warning may be issued. The employee will also be notified of their right to be accompanied by a trade union representative or another employee.

At the meeting the Governor/Headteacher must:

- Reiterate the standard of performance expected by the school.
- Explain how the employee has failed to perform to the expected standard during the review period.
- In the case of ill health, the need to take advice from Occupational Health regarding current health, adjustments, likelihood of and timescale for an improvement in health. This may also include consideration of redeployment or ill health retirement.
- Ask the employee if there are any reasons for the failure to perform to the standard expected.
- Consider any explanations given and whether any other information is required before making a decision. In the case of ill health, the need to take advice from Occupational Health regarding current health, adjustments, likelihood of and timescale for an improvement in health. This may also include consideration of redeployment or ill health retirement.
- Consider any training or support needs and how these can be met.
- Adjourn the meeting in order to decide whether a Final Written Warning should be issued.

Where the Head of School decides a Final Written Warning should be issued to the employee he should inform the employee of the decision at the conclusion of the meeting, and/or in writing within five working days of the meeting. A letter must be sent to the employee setting out the matters discussed at the meeting:

- The decision taken i.e. that a Final Written Warning has been given.

- Robust and achievable targets, with agreed outcomes for the employee to meet and specifying a time period within which they must be met, not normally exceeding six weeks. The targets must be reasonable and measurable.
- The time and dates of observations and progressions meeting and when the next capability review will take place.
- That the Final Written Warning will remain in force for a period of 12 months and that performance will continue to be monitored.
- That continuing poor performance and failure to meet the targets set out in accordance with the above timescales may result in dismissal.
- The employee's right to appeal against the decision.

The Formal minutes taken at all of the hearings must be shared with all parties present, including the employee and their representative within two weeks of the date of the hearing.

Copies of the minutes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the minutes they should make their comments in writing which should then be retained and noted for the records.

Stage 3

Decision Meeting

Where an employee's performance continues to be unsatisfactory and fails to reach the standards set following a Final Written Warning, a further formal hearing will be arranged. The letter notifying the employee will provide them with at least five working days' notice of the date of the hearing, explain why the employee's performance is considered unsatisfactory and that consideration will be given to their dismissal. The employee will also be notified of their right to be accompanied by a trade union representative or another employee.

The formal hearing to consider dismissal will be conducted by the headteacher or governor/s as appropriate. The dismissal hearing can be delegated to three Governors unless there are not enough governors who have not been involved in any previous action or decisions connected with the dismissal. In this case the decision should be delegated to two governors. A representative of the Director of Children's Services (normally a member of the Schools' HR Team) has the right to attend the hearing, where the Local Authority is the employer, which may lead to an employee's dismissal.

At the hearing the governors/ Head of School will explain how the employee's performance has failed to meet the standard expected and the targets previously set. The employee will be asked to respond to the allegations and explain any reasons for the failure to meet the required standard. The headteacher/ Head of School will adjourn the hearing to consider information provided by management and employee and make a decision regarding whether the employee should be dismissed.

If the Head of School /governors decide that the employee should not be dismissed they should inform the employee of what further action, if any, will be taken. This must be confirmed in writing within five working days of the hearing. The Head of School / Governors may decide that there is a need for further monitoring of the employee's performance. This will need to be explained in the letter.

If the Head of School /Governors decide the employee should be dismissed, they should inform the employee. This must be confirmed in writing within 5 working days of the hearing.

The letter will state:

- Details of the poor performance and why the decision was taken to dismiss the employee.
- The notice period.
- The employee's right to appeal against the decision.
- The requirement for the Head of Human Resources to give formal notice of dismissal and confirm the employee's last day of service, where the Local Authority is the employer.

The formal minutes taken at all of the hearings must be shared with all parties present, including the employee and their representative within 2 weeks of the date of the hearing. Copies of the minutes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the minutes they should make their comments in writing which should then be retained and noted for the records.

APPEALS

A representative of the Director of Children’s Services (normally a member of the Schools’ HR Team) has the right to attend appeal hearing, where the Local Authority is the employer. Appeals will be considered in accordance with the School’s model appeals procedure. At the hearing the employee will present their grounds for appeal. The headteacher/chair of governors’ panel who originally issued the Written/Final Written Warning or dismissal, responds to the grounds for appeal put forward by the employee. The Headteacher/Governors will adjourn the hearing to consider information provided by management and employee and make a decision regarding whether the or not the appeal should be upheld. If the Headteacher/Governors decision must be confirmed in writing within five working days of the hearing. The letter will state:

- Why the decision was taken to uphold/not uphold the appeal.
- The appeals panel decision is final.

APPEALS AGAINST WARNINGS

To register an appeal against a warning, the employee or their representative must write to the Chair of Governors setting out the grounds of their appeal within 10 working days of the date of the letter confirming the warning. Appeals against Written and Final Written Warnings will be considered by a member of the senior management team, headteacher or the governors’ appeals committee, as appropriate.

APPEALS AGAINST DISMISSAL

To register an appeal against dismissal, the employee or their representative must write to the Chair of Governors setting out the grounds of their appeal within 10 working days of the letter confirming their dismissal. Appeals against dismissal will be considered by the Governors’ Appeals Committee, comprising of at least three governors, who have had no prior involvement. Where there are not enough Governors available the appeal may be heard by two governors, but there should be no fewer Governors on the appeal panel than the number of people who made the initial decision.

Right to Be Accompanied

Employees have the right to be accompanied by a trade union representative or work colleague at any formal meeting/hearing. The representative has the right to present the employee’s case and respond on their behalf to views expressed at the hearing. The representative may not answer questions on behalf of the employee. If the representative is not available on the date of the hearing then the employee may propose a reasonable alternative date, which may be up to five working days after the original proposed date.

If the employee requests a representative from or by someone other than a trades unions representative or colleague, advice should be sought from Schools’ HR.

This policy is monitored by the governing body, and will be reviewed annually.

Confirmation the Capability for Support Staff Policy in respect of the Conatus Federation has been discussed by the Governing Body

Signed by:

Chair of Governors: Date:
(Conatus Federations)

Executive Headteacher: Date:

Agreed September 2022 - To be reviewed annually – Autumn 2023