



# Human Resources Policies & Procedures for Schools

## Section 10 Capability

### 10.2 Capability Policy & Procedure for Support Staff in Schools

<b>Status</b>	<b>Date</b>
Date Issued:	Spring Term 2017
Prepared by:	Schools HR Advisory Service - SBC
Review date:	Spring Term 2023
School Name:	South Bank Primary School
Date Adopted by Governing Body:	26.11.18

This procedure has been consulted with the Professional Associations/Trade Unions  
and is recommended for adoption

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## 1. Introduction and Objectives

- 1.1 For the purpose of this document, capability will be assessed by reference to skill, aptitude, efficiency, health or any other physical or mental quality. Lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard. Capability concerns may be about a single matter or a number of separate issues.
- 1.2 The procedure is designed to help and encourage all support staff to achieve and maintain acceptable standards of capability, efficiency, attendance and work performance. The main purpose of the capability procedure is to encourage an employee, whose work performance is unsatisfactory, to improve. Capability action may, at its extreme, lead to dismissal.
- 1.3 The Headteacher and Governing Body has overall responsibility for promoting and maintaining standards of work performance. Informal guidance does not form part of the formal capability procedure.
- 1.4 The following capability procedure has been established by the Governing Body in line with the powers given under the School Staffing (England) Regulations 2009. In establishing these procedures, care has been taken that the procedure is consistent with the Education Act and Regulations, employment legislation and codes of practice, as well as good HR practice. The Headteacher will have the delegated responsibility to take capability action up to initial dismissal decisions, following which there will be an opportunity to appeal to a panel of governors.
- 1.5 The Governing Body has a responsibility to apply the provisions of this procedure fairly and with full regard to the School Staffing (England) Regulations 2009.
- 1.6 All proceedings under this procedure shall be held in private and shall be confidential.
- 1.7 The use of days out of term time where the employee works term time only, shall only be used by mutual agreement in writing if it is necessary and appropriate to progress matters outside term time.
- 1.8 The submission of a grievance or a complaint of harassment or discrimination will not suspend the operation of the capability procedure or prejudice the Headteacher/Governing Body's right to pursue capability action against an employee. Concerns relating to the substance and conduct of the capability action taken against an employee cannot be dealt with under the schools grievance procedure, but should be raised by the employee during and as part of the capability process.

## 2. Procedures

- 2.1 This procedure relates to the underperformance of support staff and is called the *Capability Procedure for Support Staff in School*. All other capability concerns that relate to the health or any other physical or mental fitness of support staff are contained in the *Attendance Management Policy and Procedures for Staff in Schools*
- 2.2 A procedure flow chart is available at **Appendix 4** of this policy.

### **3. Academies**

3.1 Where academies adopt this policy it should be noted that the procedures for Hearings and Appeals will be followed in accordance with the Academy Scheme of Delegation

### **4. Representation**

4.1 The employee has a statutory right to be accompanied by a recognised trade union representative or work colleague at all formal stages of the procedure.

4.2 A Trade Union representative who is not an employed official must have been certified by their union as being competent to accompany the employee. To exercise the statutory right to be accompanied, employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for employees to insist on being accompanied by someone whose presence would prejudice the hearing nor would it be reasonable for an employee to ask to be accompanied by someone from a remote geographical location if there is someone suitable and willing available on site. (No other categories of representative will be allowed to attend).

4.3 It is the responsibility of the employee to arrange for their representation including notifying the representative of any meeting, hearing or appeal dates in good time and provide copies of all relevant documentation. Where the employee's chosen Trade Union representative or work colleague is not available at the time proposed for the meeting, hearing or appeal, the employee may propose an alternative time. If the alternative time is reasonable and falls within 5 working days after the original date proposed, the meeting, hearing or appeal must be postponed to that time.

4.4 The Trade Union representative or work colleague may also address a meeting, hearing or appeal to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee, but may not answer any questions on their behalf.

4.5 It is good practice for management to try and agree a mutually convenient date for the meeting with the employee and their Trade Union representative or work colleague to ensure that meetings do not have to be delayed or postponed.

4.6 Schools will also need to consider whether any additional support for the employee is required, for example when a physical disability or other special need is identified.

### **5. Issues of Capability of Trade Union Officials**

5.1 Where capability action is being considered against an employee who is a trade union representative the normal capability procedure will be followed. Depending on the circumstances however, it is advisable to discuss the matter at an early stage with an official employed by the union only after obtaining the employee's agreement.

### **6. Scope of Procedure**

6.1 This procedure applies to all support staff that are permanent employees or directly employed fixed term staff within the establishment of a school, regardless of length of service, whether full-time, part-time.

6.2 Support staff on daily or hourly supply has a right to be given a performance interview before a decision is reached on termination of their employment as a result of poor performance.

## **7. Capability Procedure**

7.1 As part of normal supervision arrangements, a Headteacher may discuss with employees issues about under-performance without invoking the formal capability procedure. Employees themselves may also recognise problems and request a discussion with their Headteacher.

7.2 Underperformance could be due to a range of issues such as lack of skills, inadequate training, lack of tools or other resources, problematic relationships etc.

7.3 Early identification of problems relating to an employee's capability can in many cases lead to an improvement in an employee's performance to the required standard.

## **8. In School Support Plan**

8.1 Where an employee is under-performing in their role, their Headteacher will make arrangements to discuss this with the employee. The discussion should be used to:

- identify those aspects of the employee's performance, which do not meet the required standards. This should be done with reference to the employee's agreed job description or work plan wherever possible
- try to identify the reasons and ascertain the extent to which the employee realises and accepts that there is a problem
- give the employee the opportunity to give an explanation, including any mitigating circumstances e.g. the context within which the employee's work has changed significantly; health or personal problems

8.2 An improvement plan will be drawn up with the employee, which will include:

- identifying the specific areas of work, which are unsatisfactory and the level of improvement
- the support and training to be given to the employee to assist in achieving the level of improvement required
- the employee should also indicate what steps they will take to improve performance.
- a realistic timescale during which the improvement is required. This will vary depending on the actions but will normally be between 2 and 6 weeks ensuring that all other staff involved are fully briefed on, and implement, their part of the action plan
- the process for monitoring the employee's progress over this timescale
- the likely result if satisfactory performance is not achieved and sustained
- the date of any meetings to discuss progress against the action plan
- the date of the final; review meeting when all actions should have been completed

The above will be recorded and confirmed in writing to the employee together with any written comments or observations which the employee may wish to make.

8.3 The Headteacher must consider the frequency of task when drawing up an improvement plan and ensure timescales are linked to this e.g. is the task only carried out on a monthly/quarterly basis, how long should a particular task take to complete.

8.4 Before the final review date, the Headteacher and the employee may meet at agreed intervals to discuss progress against the action plan. The employee is expected to make adequate preparation for the meetings and to co-operate with and access any assistance provided or suggested. Throughout this process the emphasis should be on helping the employee improve.

8.5 A note of the final review meeting will be made and a copy given to the employee. If suitable progress is not being achieved, against the improvement plan, this must be pointed out to the employee and the improvement plan amended if appropriate.

8.6 A final review meeting will be held at the end of the monitoring period with the Headteacher and the employee to discuss the outcome. The date will have already been set when the improvement plan was drawn up.

8.7 The employee will need to demonstrate at the review meeting what steps they have taken and any impact those steps had on the improvement of their performance. At the review meeting the Headteacher will confirm if the employee's performance has reached the required standard or not.

8.8 If the employee's performance has improved to the required standard, the Headteacher will confirm:

- in writing, the discussions
- acknowledge the improvements achieved
- the need for these to be sustained

A further review meeting will take place to ensure improvements are being sustained.

8.9 If the employee's performance has not improved to the required standard the Headteacher will inform them, and confirm in writing, that the performance is still unsatisfactory and that the employee's capability to undertake their role will be progressed to the formal stage of the procedure.

## **9. Formal Stage**

9.1 Where an employee has failed to reach the required standard of performance at the in-school support plan stage, the Headteacher will arrange a formal meeting giving the employee 5 working days notice of the date and setting out the purpose of the meeting.

9.2 The Headteacher, who may be accompanied by a HR Advisor, will meet with the employee and their representative if attending. The purpose of the meeting will be to review the improvement plan including:

- acknowledge any improvements achieved to date
- confirm the specific area of work which remain unsatisfactory
- confirm the standards required and determine whether these have been set at an achievable level
- remind the employee what steps have already been taken to improve their work performance
- discuss the outcome of the in-school support plan
- establish if there are any underlying issues, which have not already been identified
- update the improvement plan to reflect the current position and revise any timescales/actions etc.
- consider the options available

- set the review date for the formal process
- investigate whether there is any other suitable reasonable offer of employment in school – (a redeployment opportunity will not necessarily be to an equivalent post or earnings level and current earnings will not be protected).

9.3 The employee will have the opportunity to state any reasons why they believe they are underperforming, identify any support mechanisms which have not already been put in place and suggest any other support which may assist them to improve. It may be necessary to draw up a new plan with the employee.

9.4 The Headteacher will ensure that the employee is aware and understands what needs to be done. How their performance will be formally monitored, over what period of time and the consequences if their performance does not reach the required standard in the specific timescale.

9.5 It may be necessary to move directly to a Capability Hearing in cases of particularly serious concern, for example where the concerns are of a safeguarding nature and children's safety is in jeopardy.

9.6 Following the initial meeting under the formal stage, the Headteacher will write to the employee confirming the discussion, stating actions required and any additional support, which has been agreed, together with clear timescales for improvement and a copy of the improvement plan.

9.7 Performance will be formally monitored throughout the given timescale when the Headteacher will provide ongoing guidance to the employee on their progress towards the required improvement.

9.8 A final review meeting will be arranged between the Headteacher and the employee:

- at the end of the specified monitoring period or,
- when the performance reaches the required standard, if earlier or,
- if the employee's lack of improvement in performance is of concern, which requires an earlier review meeting than originally expected.

9.9 At the review meeting, if the employee's performance has reached the required standard, the Headteacher will acknowledge the achievement and confirm the need for this to be sustained. The Headteacher will confirm this in writing to the employee.

9.10 If the employee has made significant progress towards achieving the improvements of the plan then the formal monitoring period may be extended for a maximum of 4 weeks, although each case will be decided on an individual basis.

9.11 If the employee's performance has not improved at the end of the formal monitoring period, the Headteacher will confirm that a capability hearing will be arranged with a Committee of Governors, this will be confirmed in writing. It must be made clear to the employee that the capability hearing is the final stage of the capability process and could result in the termination of their employment.

## **10 Sickness Absence**

10.1 Short term absences will not normally interfere with monitoring or other formal procedures.

10.2 If long term absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the Attendance Management Policy and Procedures and referred immediately to the Occupational Health to assess the employees' health and fitness.

## **11 The Capability Hearing**

11.1 Where the school is a Local Authority maintained or controlled school and the case is to be considered by a Hearing Committee it shall be heard by a panel of no less than three governors. A representative of the Corporate Director may attend the Hearing at which the capability case is considered for the purposes of giving advice. Any advice given by the representative must be considered by those concerned before a decision is made; but they will not be party to the decision. In the majority of cases this will be a representative from Human Resources Advisory Service who will attend to provide HR advice but will not be party to any decision.

11.2 In an Academy or a non-maintained/controlled school the procedures for the hearing will be as agreed under the Academy Scheme of Delegation.

11.3 If the employee fails to attend the hearing, the case will be heard in their absence, unless acceptable reasons have been presented in advance and it is therefore agreed to postpone the hearing to a later date.

11.4 The Hearing Committee should have before them copies of all relevant papers that will be referred to during the hearing including those submitted by the employee concerned. It is for the Hearing Committee to decide whether late evidence from either side is acceptable.

11.5 The Committee should seek the views of both sides when considering whether to accept late evidence, and consider the reasonableness and fairness of the decision. If late evidence were accepted in the form of written documentation, it would be usual to allow reading time by way of a brief adjournment.

11.6 The Hearing Committee must ensure that the employee receives a fair and impartial hearing is encouraged to be represented or accompanied and is allowed to present their case or have it presented.

## **12 Procedures for the Hearing**

The Chair of the Hearing Committee will open the proceedings by:

- stating the purpose of the hearing
- introducing all present
- saying how the hearing will be conducted
- confirming that all have the same documentation
- asking for any points of clarification to be stated
- asking each side to present their case and is responsible for ensuring that all presentations, evidence and questions are relevant and questioned if any area is unclear

12.1 The Hearing Committee will then proceed to hear the case. The order of the proceedings is detailed at **Appendix 1**.

12.2 Once the Hearing Committee are satisfied that all the relevant evidence has been heard then the committee must reach a decision and convey the decision to the employee and representative. All parties other than the HR representative advising the Hearing Committee and note taker shall withdraw when the decision is considered.

12.3 Following careful consideration of the case, the Chair of the Hearing Committee will normally announce the decision and the formal action if any, to be taken. The Chair of the Hearing Committee will also give an explanation for that action and will explain the employee's right of appeal under this procedure. These points will be confirmed in writing to the employee and copied to their representative unless the employee indicates otherwise.

### **13. Possible Outcomes**

13.1 The decision will usually be given verbally to the employee in the presence of their representative. However, this may be varied by mutual agreement. The decision will also be confirmed in writing. The possible actions arising from a capability hearing are:

#### **No action required**

All references relating to the matter will be removed from the employee's personal file.

#### **Final Written Warning and Formal Monitoring**

Where the Panel believes there is a realistic possibility that the employee will be able to reach the required standard of performance, the employee will be issued with a final written warning confirming the standard of performance expected and the timescales for improvement. The final written warning will remain valid for 18 months. The employee will also be informed of their right of appeal and the consequences of any further under-performance issues, which could be dismissal should the required standard not be achieved.

Following the issuing of a final written warning, formal monitoring will continue for a period not exceeding 2 months.

#### **Dismissal**

Where the Panel believes the employee's performance will not improve sufficiently, the final stage of the process will be dismissal. The employee will be informed of the reasons for the dismissal, the date on which their employment will terminate, the appropriate period of notice and their right of appeal. Notice of dismissal will be issued by the Corporate Director for Local Authority maintained/controlled schools. This is done within 14 days of receipt of the notification of the decision. The employee will be informed of their right of appeal.

#### **Alternative to dismissal**

In exceptional circumstances, an opportunity for redeployment may be considered at the time of the dismissal. However it must be made clear to the employee that such redeployment can only be considered if a vacancy exists and if the employee meets the essential criteria for the vacant post. Any redeployment will be subject to an appropriate trial period, which will be identified when the alternative employment is offered. If the alternative employment is not successful within the trial period, the hearing will be re-convened with the original Hearing Committee.

A redeployment opportunity will not necessarily be to an equivalent post or earnings level and current earnings will not be protected.

### **14. Appeal**

14.1 An employee can appeal against any formal action taken as a result of this procedure. All appeals will be conducted as a full re-hearing of the case.

14.2 An appeal must be sent to the Chair of Governors. A pro-forma will be included with the written notification of formal action, on which the employee can give notice of appeal and must include reasons of the grounds of appeal, see **Appendix 2**. Notice of appeal must be received within 5 working days of receipt of the decision letter. This time limit will be strictly observed.

14.3 Arrangements for the appeal will be made on receipt of the appeal request. Wherever possible the appeal should be heard within 20 working days of the lodging of the appeal and the employee should have at least 5 working days notice of the Appeal Hearing.

## **15. The Appeals Committee**

15.1 An Appeals Committee should be formed from the Governing Body to include no fewer members of the Governing Body than that of the Capability Hearing Committee whose decision is subject to appeal. A representative of HR should also assist the Appeals Committee but the representative shall not be entitled to vote in any proceedings of the Committee.

15.2 No member of the Capability Hearing Committee concerned shall be a member of the Appeal Committee.

15.3 All papers presented to the hearing, together with the decision of the Chair of the Committee and any subsequent correspondence must be available to the Appeals Panel. Any new evidence, which the employee wishes to introduce, should be copied to all parties at least 2 working days in advance of the Appeal Hearing.

## **16. Appeal Hearing:**

16.1 The Appeals Procedure will be the same as the procedure for the Hearing (as set out in Appendix 3).

16.2 The Appeals Committee will consider the grounds for the appeal, paying particular attention to any new evidence that has been introduced by the employee and hear representations from both management and the employee or their representative in order to determine whether the decision of the hearing was fair and reasonable in view of the evidence available.

16.3 The decision of the Appeals Committee is final and binding on all parties and, once made must then be notified to the employee and the Local Authority in writing.

## **17. Records**

17.1 The maintenance of accurate and contemporaneous records is essential, particularly in the event of referral to an Employment Tribunal. Notes are not necessarily verbatim, and there is no requirement for agreed minutes. It should be noted that consideration by an employment tribunal might be an extended time after the matter was considered internally.

17.2 Records should be held in a secure and confidential manner, often the issues raised by an employee are particularly sensitive and it is essential that information is kept in accordance with the Data Protection Act 1998.

Documentation which should normally be retained includes:

- all papers presented at the Hearing and Appeal Committees’
- notes of meetings (contemporaneous or otherwise)
- information collated by the panel or used to assist in making a decision;
- confirmation of the decision, or other supplementary correspondence;
- clarity on how decisions were reached and capability action determined.

## 18. HR Advisory Service - Contact Details

If you have any questions in relation to this briefing, please contact the Schools HR Advisory Team.

		<b>Telephone</b> <b>(01642)</b>	<b>Email</b>
Anne Rix	HR Manager (Schools)	526952	<a href="mailto:anne.rix@stockton.gov.uk">anne.rix@stockton.gov.uk</a>
Sue Watson	Principal HR Advisor	526951	<a href="mailto:susan.watson@stockton.gov.uk">susan.watson@stockton.gov.uk</a>
Joanne Mylan	Senior HR Advisor	526954	<a href="mailto:joanne.mylan@stockton.gov.uk">joanne.mylan@stockton.gov.uk</a>
Liz Devine	Senior HR Advisor	528279	<a href="mailto:liz.devine@stockton.gov.uk">liz.devine@stockton.gov.uk</a>
Clair Bell	HR Advisor	526863	<a href="mailto:clair.bell@stockton.gov.uk">clair.bell@stockton.gov.uk</a>
Shellena Hussain	HR Advisor	528271	<a href="mailto:shellena.hussain@stockton.gov.uk">shellena.hussain@stockton.gov.uk</a>

### Address

Schools HR Advisory Service  
Human Resources,  
1st Floor, Municipal Buildings,  
Church Road,  
Stockton-On-Tees  
TS18 1LD

## **PROCEDURE FOR A HEARING**

1. The Management representative to present the facts of the case and may call witnesses.
2. The employee or his/her representative to have the opportunity to question the Management representative and any witnesses about the facts provided.
3. The Headteacher/Hearing Committee to have the opportunity to question the Management representative and any witnesses.
4. The employee or his/her representative to put his/her case and to call such witnesses as he/she wishes.
5. The Management representative to have the opportunity to ask questions of the employee or his/her representative and witnesses.
6. The Headteacher/Hearing Committee to have the opportunity to ask questions of the employee or his/her representative, or the witnesses.
7. The Management representative to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
8. The employee or his/her representative to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
9. The Management representative and the employee and his/her representative to withdraw.
10. The Headteacher/Hearing Committee to consider the facts presented to them.

The hearing may also be adjourned at the deliberation stage, in order to allow for further investigation if the Headteacher/Hearing Committee feels that there are points that need clarification. An opportunity may be given to re-examine the evidence/witnesses.

## **APPENDIX 2**

**CAPABILITY PROCEDURE FOR SUPPORT STAFF IN SCHOOLS  
APPEAL PRO-FORMA**

NAME : ..... TRADE UNION: .....

POST TITLE: ..... UNION REPRESENTATIVE  
NAME AND CONTACT DETAILS:

SCHOOL NAME:.....

CONTACT NUMBER .....

DATE OF HEARING: .....

DECISION: .....

DATE LETTER ISSUED

**THE GROUNDS FOR MY APPEAL ARE:**

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.....  
Continue on a separate sheet if necessary. Please ensure that additional sheets are signed, numbered and dated.

**SIGNED:** .....

**DATE:** ..... **Contact Number:**

**PLEASE RETURN THIS PRO-FORMA WITHIN 5 WORKING DAYS OF RECEIPT OF THE  
DECISION LETTER TO:**

.....  
.....  
.....

**Time limits for appeal will be strictly observed**

## **CAPABILITY PROCEDURE FOR SUPPORT STAFF IN SCHOOLS**

### **PROCEDURE FOR AN APPEAL HEARING**

1. The Management representative to present the facts of the case and may call witnesses.
2. The employee or his/her representative to have the opportunity to question the Management representative and any witnesses about the facts provided.
3. Members of the Committee to have the opportunity to question the Management representative and any witnesses.
4. The employee or his/her representative to put his/her case and to call such witnesses as he/she wishes.
5. The Management representative to have the opportunity to ask questions of the employee or his/her representative and witnesses.
6. Members of the Committee to have the opportunity to ask questions of the employee or his/her representative, or the witnesses.
7. The Management representative to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
8. The employee or his/her representative to have the opportunity to sum up his/her case. (No new evidence should be submitted at this point)
9. The Management representative and the employee and his/her representative to withdraw.
10. The members of the Appeals Committee to consider the facts presented to them.

The appeal hearing may also be adjourned at the deliberation stage, in order to allow for further investigation if the Committee feels that there are points that need clarification. An opportunity may be given to re-examine the evidence/witnesses.

### **APPENDIX 4**

## SUPPORT STAFF CAPABILITY PROCEDURE FLOWCHART

