

St John the Baptist C.E. (Aided) Primary School

Staff Capability Policy

This procedure applies only to member of staff about whose performance there are serious concerns that the appraisal process has been unable to address. The policy follows some general principles, some laid out in statute. These are given in Appendix 1 of the policy.

Defining issues that may lead to this policy being applied

Lack of capability is defined as an employee failing to reach or maintain the required standards of performance that their job demands.

Examples of lack of capability include but are not limited to:

- Failing to meet reasonable deadlines for tasks, projects, reports, etc.
- Regularly producing work which is sub-standard, inaccurate, badly presented or poorly organised
- Failing to carry out key areas of job responsibilities, effectively and consistently
- Failing to meet the relevant professional standards, e.g. Teachers' Standards
- Failing to provide effective leadership and management, where applicable
- Poor practice with regard to child/adult safeguarding
- Physical factors that are not disability or health related but prevent the employee from undertaking all aspects of their job.

Initial notification of capability procedures beginning

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting. The notification will also contain;

- copies of any written evidence;
- the details of the time and place of the meeting;
- advise that the member of staff has the right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

The meeting will be conducted by the Chair of Governors (for head teacher capability meetings) or head teacher (for other members of staff).

Formal capability meeting

Where formal action is necessary, the manager will write to the employee advising them of the concerns and informing them that they are required to attend a formal capability meeting. The letter should confirm the details of the formal meeting (date, time, venue, who will be in attendance etc.), the possible outcomes of the meeting, the employee's right to be accompanied, the timescale for them to submit any documentation to be considered and that the meeting may take place in the employee's absence if they fail to attend without providing

a satisfactory reason. A copy of the capability summary and a copy of this policy should also be sent to the employee. The employee will be given at least five days notice, in writing, of the meeting.

At the meeting, the manager must:

- tell the employee where their performance is not meeting the required standards and outline what these are
- confirm what support has been put in place to assist the employee and explore any further options which may support them
- give the employee the opportunity to respond and advise of any issues preventing them from meeting the required standards, including any mitigating factors
- carefully consider the employee's response.

The manager conducting the meeting may also adjourn the meeting *for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.*

The manager should consider all the information and come to a decision regarding the most appropriate course of action. Notes will be taken of formal meetings and a copy sent to the member of staff within five working days. A decision will also be included with this communication. This will either;

- Conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- Confirm that further informal support is required but that this will be outside of this policy
- Issue an improvement note and inform the employee that if they fail to meet the required standards within the review period, this may result in a referral to a capability hearing, at which a determination may be made regarding their continued employment.

Where an improvement note is issued an Improvement Plan will be written. This will;

- identify the professional shortcomings, *for example which of the standards expected of the member of staff are not being met;*
- give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*);
- explain any support that will be available to help the member of staff improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases it will be up to eight weeks. Where there are serious concerns e.g. the health and safety of pupils due to poor behaviour management, then

the process may be moved to a final written warning which will invoke an assessment period of 4 weeks.

- warn the member of staff formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

A member of staff may appeal to the Governing Body Capability / Dismissal Committee within five days of the formal written notification. The appeal must be heard within ten days, but the appeal will not suspend the capability procedure. Each party will present their case to the committee who will either uphold or dismiss the decision of the formal capability meeting.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting should an improvement note have been issued. Formal monitoring, evaluation, guidance and support will continue during this period.

Weeks 1 to 8 – Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

If at any point during this stage the evidence suggests a more serious problem, a decision may be taken to move directly to a final written warning.

In Week 9 the member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal review meeting

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the manager is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within 4 weeks, may result in dismissal and given information about the handling of the further monitoring and review period and the procedure.

Weeks 1 to 4 – Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

In week 5 the member of staff will be invited to a final evaluation meeting. At least 5 working days notice must be given for the meeting and the employee may be accompanied by a union representative or colleague. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here.

If performance is unsatisfactory the employee should be told that the matter will be referred to the Governing Body Capability / Dismissal Committee. The result of the assessment, main points of the meeting and date of capability / dismissal committee hearing should be recorded in writing to the employee as soon as possible.

Dismissal Committee Stage

As with formal capability meetings and formal review meetings, at least five working days notice must be given and the member of staff should be advised of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

The governing body should set up a staff Capability / Dismissal Committee with at least three governors. The committee must hear the representations and recommendations brought by the manager conducting the capability evaluation, and any representations that the employee may wish to make. Following the meeting the Committee will discuss the evidence presented and will reach a decision within five working days which will be conveyed to the employee in writing. The letter should set out the decision of the committee. If a dismissal decision is reached then the date of termination of employment should be given and the employees right to appeal should be notified.

Appeals

If an employee wishes to appeal against the decision any part of the capability process, they must do so in writing, stating the grounds for their appeal, within five days of receiving the written outcome.

An employee may appeal on the following grounds:

- the sanction given was too harsh given the circumstances
- the procedure was not fairly or correctly applied
- new information has come to light that would directly effect the decision

The written appeal should be sent to the Clerk to Governors. The Clerk to Governors will then arrange for the appeal to take place. A Governors' Appeal Committee will be convened to hear the appeal. The appeal should be heard without unreasonable delay. A minimum of five days notice will be given to allow for preparation.

The outcome of an appeal hearing may be:

- to refer the matter back to the senior manager or dismissal committee if significant new information/evidence is provided, which was not available previously, and may change the original decision

- conclude a procedural irregularity occurred and determine whether this had an impact on the decision making process and outcome. If so, decide an appropriate sanction and make a recommendation to rectify the situation
- uphold the appeal and determine an alternative sanction/appropriate course of action
- reject the appeal and confirm that the original decision stands.

The decision will be given verbally to all parties at the end of the appeal hearing unless a valid reason exists not to do so, and it will be confirmed in writing to the employee within five days. An appeal is not a re-hearing of all of the facts but to determine if the original decision was reasonable given the circumstances. The process ends with the decision of the Appeal Committee.

Non-attendance of meetings

If an employee fails to attend a meeting or hearing through circumstances beyond their control, such as certified illness, an alternative time and date may be offered. Alternatively they may submit a written statement or nominate a representative to attend on their behalf.

Where an employee is persistently unable or unwilling to attend the meeting/hearing without good cause, it will proceed in their absence and a decision based on the evidence available will be made.

Policy History

Amended and separated from the 2012 “Policy for appraising teacher performance and dealing with capability issues”. Capability now stands in this separate policy and is applicable to all members of staff.

Discussed by the whole Governing Body on Monday 14th September 2015

Appendix 1 - General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

Part B of the policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. *Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.*

Consistency of Treatment and Fairness

The governing body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The governing body is aware of the guidance on the Equality Act issued by the Department for Education.

Definitions

Unless indicated otherwise, all references to “teacher” include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be (*eg referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures*). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing body and head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

The governing body and head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.