



Support Staff Capability Policy (Attendance Only)

Author	Model Policy (Shane Baker)	Date: November 2023
Approved by:	Full Governing Board	Date:
Last reviewed on:	5 ^h November 2023	
Next review due by:	In light of updated model policy	

CHANGES

- September 2015: Policy implemented

N.B. This policy is only applicable for matters of Attendance. All matters relating to Managing Performance have been superseded by the new Managing Performance policy issued to schools on 25 August 2021.

Contacts

If you have any questions regarding this policy please contact the Employee Relations Team Schools' Specialist.

Contents

1	INTRODUCTION.....	4
2	IN SCOPE.....	4
3	OUT OF SCOPE	4
4	KEY PRINCIPLES AND RESPONSIBILITIES	5
4.1	Consideration of suspension.....	5
4.2	The right to be accompanied	5
4.3	Conflict of interest	5
5.	PROCEDURE.....	6
	Appendix A: Sequence to be followed at a Formal Capability Meeting.....	11
	Appendix B: Sequence to be followed at all Appeal Hearings	13



N.B. This policy is only applicable for matters of Attendance. All matters relating to Managing Performance have been superseded by the new Managing Performance policy issued to schools on 25 August 2021.

1 Introduction

Cann Bridge School is committed to continuous improvement to ensure excellent service delivery. Improvement is dependent on the ability of employees to achieve and maintain expected standards of performance. Employees are expected to be competent and able to undertake the duties of the post for which they are employed.

This document provides a formal framework to encourage improvement amongst employees whose performance or attendance is regarded as unsatisfactory or unsustainable. It also sets out the steps to follow where consideration may need to be given to terminating employment on the ground of capability.

2 In Scope

All Support staff.

Situations covered by this policy are:

- unsatisfactory performance related to skills/abilities;
- unsatisfactory performance related to health, whether due to inability to meet the required standards of performance for the role or due to attendance (sickness absence)

3 Out of Scope

- Employees in their probationary period: please refer to the probation policy and procedure.
- Action or Dismissal on the ground of Some Other Substantial Reason.
- Action or Dismissal on the ground of the employee's conduct: please refer to the Disciplinary Policy.

4 Key Principles and Responsibilities

In the first instance and where appropriate, capability issues should normally be dealt with informally under the Individual Performance Management Guide or Managing Attendance Guide.

There are three stages to the formal capability procedure:

- STEP 1: Investigation, recommendation and if appropriate, preparation for meeting.
- STEP 2: The meeting, which can relate to:
 - Unsatisfactory performance related to skills: (section 2.1) and / or
 - Unsatisfactory performance related to health: (section 2.2).
- STEP 3: The right to appeal

4.1 Consideration of suspension

In exceptional circumstances it may be necessary to consider suspending an employee, for example, where their attendance or performance at work is placing them or others at risk, is affecting the delivery of service, or where there is a risk that these things may happen. In such circumstances, suspension may be deemed necessary or desirable whilst an investigation and / or meeting is conducted. Any decision to suspend will normally be made by the Headteacher in consultation with the school's HR Adviser.

Suspension is always on normal contractual pay and is not itself any form of sanction, nor does the fact of suspension give rise to any implication that formal action will or should be taken against the employee on the ground of capability. The reasons for suspension must be stated in writing to the employee using the standard suspension letter. This letter should set out the reasons for the suspension and any restrictions which apply to the employee during the period of suspension.

4.2 The right to be accompanied

Suspension and Investigatory Meetings: the Headteacher/Investigating Officer will normally permit the employee to be accompanied at such a meeting, provided it is practical and reasonable to do so in the circumstances and it does not cause undue delay to the process.

Formal Meetings: the employee has the right to be accompanied by a companion who is either a trade union representative or a workplace colleague.

The companion can:

- Put forward the employee's case, by making representations, questioning management witnesses and presenting evidence on behalf of the employee, sum up the employee's case at the conclusion of the evidence, and respond on the employee's behalf to any view expressed at the meeting.

The companion is not permitted to answer questions posed directly to the employee in relation to the capability issues under consideration.

4.3 Conflict of interest

If any person involved in the formal process (whether at the investigatory, meeting or appeal stages) believes that they may have a conflict of interest or that there is any good reason why they should not be involved in the process, they should seek immediate guidance from the school's HR Adviser in the first instance

5. Procedure

Step 1 – Investigation, Recommendation and Preparation

Investigation and Recommendation

An investigation will be conducted by an appropriate manager (often the line manager), to gather evidence relating to the capability issues, to compile a report and present to the Headteacher.

Following the preparation of the capability report, the case will be reviewed by the Headteacher and a decision will be reached as to whether a formal meeting is necessary.

The employee must co-operate with the investigation process. Willful refusal to do so may be regarded as a disciplinary offence and may result in disciplinary action being taken. If the employee wishes to submit any evidence during the process, they should do so during the course of the investigation so that this information can be taken into account. If the employee fails to submit such evidence at the investigation stage, it is possible that the Chair of the formal meeting will refuse to accept it, unless there are extenuating circumstances which adequately explain why evidence was not submitted earlier, or the Chair takes the view that due to its relevance, the evidence must be heard in any event.

If, at any stage during the investigation process, it appears that the matter is one of conduct rather than capability, the investigation should transfer to the School's Disciplinary Policy.

Preparation for Capability Meetings

Formal meetings are normally chaired by the Headteacher or the Chair of the Panel of Governors. A note taker will be in attendance.

Where the outcome of the formal meeting could be dismissal, a panel of Governors will be convened and a Local Authority HR Adviser will be present to advise the Panel.

The employee will be notified of the specific capability issues, the potential gravity of the situation (and specifically whether dismissal may be a consideration), the arrangements for the meeting, and provided with a copy of the investigation report and any supporting evidence no less than 5 working days in advance of the meeting. The employee should be told which witnesses management have asked to attend. Similarly, the employee should notify management in advance of the meeting of any witnesses they intend to call to give evidence.

Management will endeavour to set the meeting for a mutually convenient date within a reasonable timescale. Once the date has been set, an application by the employee to change the date of the meeting may be accepted if there is good reason. A second and final date will be offered, usually not more than five working days after the original date. Save where there are particular extenuating circumstances, no further changes to the timing of the meeting will be offered and the employee will be informed that if they do not attend, the meeting may go ahead in their absence.

If the employee fails to attend the meeting, advice from the school's HR Adviser should be sought. A decision may be made to proceed without the attendance of the employee, on the basis of the evidence available. In cases where the employee has trade union representation, they may present the employee's case in the employee's absence (provided the employee has given them authority to do so) and in any case, the employee will be permitted to make written representations.

Step 2 – The Capability Meeting

Outcomes

The potential outcome of a capability meeting is one of the following:

- No formal action, first advisory notice, final advisory notice, dismissal (with notice)

2.1 Unsatisfactory performance related to skills

Formal meetings are held where an employee has failed to reach the required standards of performance following a performance improvement plan and/or where an employee's level of performance amounts to a serious shortfall, often involving a risk to themselves, their colleagues, the school and pupils.

The purpose of the meeting is to:

- Consider the evidence as to the employee's standards of performance against targets and objectives.
- Consider the impact of the individual's performance on the school, colleagues and pupils.
- Consider the extent of any support provided to date and whether and to what extent it would be reasonable to provide further support.
- Consider any mitigating circumstances.
- Determine what, if any action should be taken.

A further outcome of a capability meeting (save where the outcome is dismissal) will normally be to issue an appropriate advisory notice, detailing matters such as the following:

- How and why the employee has underperformed.
- Any targets, standards and/or competencies to be achieved by the employee and details of the applicable timescales for such improvement.
- Information as to any adjustments, training, supervision or support to be offered to the employee.
- Details of any performance monitoring arrangements and information as to the dates on which any further performance reviews will take place
- The likely consequences of failing to meet the required standards of performance.

A performance capability meeting will not normally result in a dismissal unless one or more previous advisory notices have been given. While the standard process will be to issue a first and a final advisory notice before dismissal is a consideration, it may not be appropriate to do so in every case. If dismissal is a potential consideration without having first issued a first and a final advisory notice, advice should be sought from the school's HR Adviser.

In cases of very serious performance issues which appear to be the result of misconduct as opposed to capability, or gross negligence (misconduct) the case should be dealt with under the School's Disciplinary Policy.

2.2 Unsatisfactory performance or attendance relating to health

Formal meetings are likely to be held in the following circumstances:

- Where an employee has been absent from work due to long term sickness and is unable to return to work, either in the foreseeable future or at all.
- Where an employee has high levels of sickness absence (in terms of frequency or duration, or both) and has therefore not met the required levels of attendance and / or performance.
- Where an employee is able to attend work regularly but is unable to perform to the required standards due to issues relating to their health.

The purpose of the meeting is to:

- Consider the evidence as to the employee's standards of attendance and / or performance.
- Consider the impact the employee's health may have had on their levels of attendance and / or performance.
- Consider the extent of any adjustments or support provided to date, the effectiveness of such measures and whether and to what extent it would be reasonable to provide further adjustments or support to encourage or enable the employee to meet the required standards. Where appropriate, consider any medical advice (e.g. from Occupational Health or the employee's medical advisers). Employees in the pension scheme can be considered for ill-health retirement if they meet the relevant criteria.
- Consider the wider impact of the employee's attendance or performance issues, such as the effects on the employee's colleagues, the school and pupils. Determine whether the employee has a medical condition which amounts, or is likely to amount to a disability. If so, consider whether and to what extent reasonable adjustments have been put in place to accommodate the needs of the employee, the effectiveness of such adjustments and whether and to what extent further adjustments may reasonably be made.
- Where appropriate, discuss with the employee the possibility of redeployment.
- Determine what, if any, action should be taken.

A further outcome of a capability meeting (save where the outcome is dismissal) will normally be to issue an appropriate advisory notice, detailing matters such as the following:

- How and why the employee has failed to meet the required standards of attendance and / or performance.
- Any targets, standards and / or competencies to be achieved by the employee and details of the applicable timescales for such improvement.
- Information as to any adjustments, training, supervision or support to be offered to the employee.
- Details of any attendance or performance monitoring arrangements and information as to the dates on which any further reviews will take place
- The likely consequences of failing to meet the required standards of attendance and / or performance.

A health-related capability meeting will not normally result in a dismissal unless one or more previous advisory notices have been given. While the standard process will be to issue a first and a final advisory notice before dismissal is a consideration, it may not be appropriate to do so in every case. If dismissal is a potential consideration without having first issued a first and a final advisory notice, advice should be sought from the school's HR Adviser.

An example of a case where consideration may be given to dismissal without prior advisory notices having been issued is where there is clear medical evidence that the employee will not be able to return to work in either the short or longer term and that no adjustment or support is likely to change this.

In cases of very serious performance issues which appear to be the result of misconduct as opposed to capability, or gross negligence (misconduct) the case should be dealt with under the school's Disciplinary Policy.

Further Guidance

The following guidance should be noted:

- Where there is no underlying health condition which is likely to be considered to be a disability, a first or final advisory notice may be issued in the first instance, depending on the circumstances. The employee will be advised as to how their absences and / or performance will be monitored in the

future and under what circumstances consideration may be given to further action being taken under the this policy.

- Where the employee has or is likely to have a disability and reasonable adjustments have not improved attendance or performance, an advisory notice can be issued which details any alternative measures agreed at the meeting (e.g. a reduction in hours, amendments to duties or transfer into an alternative position within the department). The effectiveness of such further measures will be monitored and the employee advised under what circumstances consideration may be given to further action being taken under this policy.
- A further potential outcome of a capability meeting for a disabled employee may be that they wish to seek suitable alternative employment or early/flexible retirement. . Failure to find suitable alternative employment within the school will normally lead to a further capability meeting.
- An employee may be dismissed on the ground of capability where appropriate. Examples of such cases will include the following:
 - The employee is unfit / unsuitable due to medical reasons to fulfil the duties of the post and is likely to remain so for the foreseeable future, even, in the case of disabled employee, with reasonable adjustments being made.
 - The employee is unfit / unsuitable due to medical reasons to fulfil the duties of any suitable alternative role which is available and is likely to remain so for the foreseeable future, even, in the case of a disabled employee, with reasonable adjustments being made.
 - Reasonable attempts to support the employee in their role have been unsuccessful in enabling the employee to meet the required standards of attendance and / or performance.

Step 3 – Right of Appeal

All employees have the right to appeal against the outcome of a formal capability meeting. There is a right of appeal against dismissal for reasons other than challenging the medical opinion.

Any appeal should be lodged in writing within five working days of receipt of the Headteacher's or Governor's Panel decision letter.

Arrangements will be made for an Appeal Hearing to be held. The Governors' Appeal Panel must contain an equivalent number of Governors to the Governors' Staffing Panel none of which should have been involved in the original decision. If dismissal is a possible outcome, a representative of the Local Authority has the right to attend the Appeal and give advice, which must be considered.

The date of the Appeal Hearing will be agreed with the employee within ten working days of receipt of the appeal letter.

Wherever reasonably practicable, appeals will normally be heard within four weeks of the appeal being lodged.

Appeal Hearings will be structured around the grounds of the employee's appeal and will not be a full re-hearing of the case.

The Appeal may result in a variation or cancellation of the original decision. The decision of the Appeal Panel will be final.

Notification of the Appeal Panel's decision and reasons for that decision will normally be given verbally to all parties concerned and will always be communicated to the employee within five working days from the date of the Appeal Hearing. This letter should be sent to the employee by special delivery.

Where the outcome is to uphold the appeal, the Chair will notify the school's HR Adviser in writing within five working days, giving the reason for the determination. HR will rescind the notice for community and voluntary controlled schools. In the case of voluntary aided, Academy, Trust and Foundation schools, the Chair of Governors will rescind the notice of dismissal.

The sequences to be followed at the formal Fit to Work meeting and Appeal Hearings can be found at Appendix A and Appendix B respectively.

Other relevant policies

- Individual Performance Management Guide
- Managing Attendance (Sickness) Guide
- Disciplinary Policy

Appendix A: Sequence to be followed at a Formal Capability Meeting

Documentation used at and generated by the formal meeting will be circulated to members of the Panel, HR Adviser and all relevant parties in advance of the meeting. This must include a list of the witnesses to be called by both the school and employee's side at the meeting.

The meeting will be attended by either the Headteacher or a Governors' Panel (minimum of 3 Governors), the Employee and their representative if required; and the investigating officer(s) who may be accompanied by an HR Adviser; plus witnesses.

Where dismissal is a possible outcome an HR Adviser will be present to advise the Governors' Panel.

If dismissal is a possible outcome in a Local Authority Maintained School, a representative from the Local Authority has the right to attend the meeting and give advice, which must be considered.

Sequence of Events:

1 Introductions

Including procedural issues to be covered and confirmation of witness lists.

2 Management Case

The manager or management's representative will put his/her case in the presence of the employee and/or representative and may call witnesses.

3 Cross Examination by Employee

The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.

4 Questions from the Headteacher/Panel

The Panel and the Human Resources Adviser may ask questions of the manager and/or witnesses.

5 Employee Case

The employee or representative will put his/her case including any mitigation in the presence of the manager and may call witnesses.

6 Cross Examination by Management

The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.

7 Questions from the Panel

The Panel and their HR Adviser or nominee may ask questions of the employee and/or witnesses.

8 Summing Up

The management representative and the employee or their representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.

9 Withdrawal

All parties except the Panel and HR Adviser (in cases of possible dismissal) will withdraw to consider the evidence and decide on an outcome

10 Recall all parties to clarify points of uncertainty, if necessary

The Panel may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.

11 Decision and Outcomes

Notification of the Headteacher or Panel's decision will normally be given verbally to all parties concerned on the day and the reasons for the decision confirmed in writing within five working days from the date of the meeting. This letter should include the right of appeal and be sent to the employee by special delivery.

Appendix B: Sequence to be followed at all Appeal Hearings

Documentation used at and generated by the Capability Meeting will be circulated to the appeal panel, HR Adviser, and all relevant parties in advance of the appeal hearing. This must include a list of the witnesses to be called by both the management and employees side at the Appeal Hearing.

The hearing will be attended by Appeals Panel Members (minimum 3 members and at least the same number as the Governors' Staffing Panel), Adviser to the Panel; the Employee and their representative; the Chair from original meeting who may also be accompanied by their HR Adviser plus any witnesses.

Sequence of Events:

1 Introductions

Including procedural issues to be covered and confirmation of witness lists

2 Employee Case

The employee or representative will put their grounds of appeal in the presence of the management representative and may call witnesses.

3 Cross Examination by Management

The management representative shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.

4 Questions from the Appeal's Panel

The Appeal Panel and the HR Adviser may ask questions of the employee and/or witnesses.

5 Management Case

The management representative will put their response to the grounds of appeal in the presence of the employee and/or representative and may call witnesses.

6 Cross Examination by Employee

The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.

7 Questions from the Panel

The Appeal Panel and the HR Adviser or nominee may ask questions of the manager and/or witnesses.

8 Summing Up

The manager and/or adviser and the employee or representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.

9 Withdrawal

All parties except the Appeal Panel and their Adviser will withdraw to consider the evidence and decide on an outcome

10 Recall all parties to clarify points of uncertainty, if necessary

The Appeal Panel may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.

11 Decision and Outcomes

Notification of the Appeal Panel's decision will normally be given verbally to all parties concerned and will be communicated to the employee in writing as soon as possible. In the case of a decision not to uphold the employee's appeal, reasons will be provided in writing. This letter should be sent to the employee by special delivery.