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# **Schools Managing Employee Performance (Capability) for Support Staff Procedure**

Produced by HR Advisory Service

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## **DOCUMENT STATUS**

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Appendix 1 - Procedure for Staff Dismissal/Appeals Hearing

## **1. INTRODUCTION**

- 1.1 The School and its Governors recognise that its employees are its best asset and encourage improved performance by putting into place a range of policies, practices, procedures and systems that are vital in achieving excellence in teaching and learning.
- 1.2 This procedure on Managing Employee Performance has been designed to complement other School policies, procedures and initiatives aimed at developing employees and improving performance management.
- 1.3 The procedure sets out the steps to be followed by the Headteacher or other nominated person when an employee seems to be experiencing difficulties in carrying out his/her job.
- 1.4 A clear distinction is drawn between poor performance due to performance that is not attaining and maintaining the required standard (what someone cannot do even when trying their best) and a matter of conduct that would be dealt with under the School's Disciplinary Procedure.
- 1.5 The procedure focuses on helping the employee to achieve satisfactory levels of work performance through training, coaching, target setting and monitoring. It is therefore essential that the employee receives appropriate support and guidance both on a work based and personal level.
- 1.6 The procedure contains the steps needed for taking action in cases where the employee's performance does not improve, for whatever reason, and further action may be required. Due account must be taken of any disabled employee whose situation may be unique and requires consideration of their condition in accordance with the Equality Act 2010.
- 1.7 Effective management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance management and review will help avoid the need for the implementation of formal capability procedures. In some cases an improvement may be achieved informally with a minimum of support and attention.
- 1.8 There are no points within this procedure that is intended to prevent Head teachers from the effective handling of employees' day to day performance as they arise. It does highlight the benefits of early intervention and encourages discussions, during the everyday performance management process or informally, as vital in preventing problems from developing. See Performance Review and Development Policy for Support Staff.

## **2. SCOPE OF THE PROCEDURE**

- 2.1 This policy applies to all support staff within schools and should be adopted by the Governing Body accordingly.

### **Role of Governors**

- 2.2 Governors should not normally be involved with the Managing Employee Performance procedure for support staff before the Capability Hearing.

## **3. SETTING STANDARDS**

- 3.1 Each member of staff should have an agreed written performance plan. This should be compiled with reference to the employee's job description, agreed objectives, the employee's performance against those objectives, training and development needs.
- 3.2 Head teachers should ensure that employees are aware of the expected level of performance and agree targets to achieve the required goals.

## **4. IDENTIFYING PERFORMANCE PROBLEMS - ADDRESSING INFORMALLY THROUGH THE PR&D/SUPERVISION PROCESS**

- 4.1 It is the line manager's responsibility to assess whether or not a problem exists and what indications there are where an employee is failing to achieve or maintain a satisfactory level of performance. It should be noted that at this point the process is at an informal stage and the line manager must discuss the matter with the employee at an early stage prior to any formal action.
- 4.2 If there is a need to explore apparent poor performance, the line manager will undertake this as part of his/her usual managerial role, reaching a view by:
- assessing previously agreed targets against the employee's performance;
  - deciding on the best approach to tackle the issue, i.e. a more formal approach;
  - gathering all the evidence regarding the poor performance (reports; complaints, examples, training records, etc.);
  - assessing the employee's job description plus any other relevant information (such as workload, environment, etc.) and establishing that any performance issues fall properly within the scope of the employee's job;
  - identify any resource issues or working practices that need to be addressed.

- 4.3 Consideration should be given to an employee's disability or any condition that may be affecting their performance and any adjustments that could be put into place to assist the employee.
- 4.4 At the conclusion of the exploration it may be necessary to consider using an alternative procedure. The line manager may liaise with their Human Resources Business Partner, at any point if additional support, advice and/or guidance is required in applying this and other procedures.
- 4.5 Performance problems should be regularly discussed and addressed with an employee during the PR&D/supervision process. If the performance problems are to be addressed formally, the formal stage should not be the first time the employee has been made aware of the line manager's concerns.
- 4.6 The line manager must inform the employee of all concerns, ask the employee for his/her interpretation of the problem and any personal difficulties experienced by them that may have contributed to the poor performance. As a result of this there must be an agreed course of action that will hopefully result in improved performance. The discussion should be a two way process, setting future performance standards.
- 4.7 The action plan must be agreed and written down which will include/involve all or some of the following:
- regular monitoring of performance;
  - a review period and dates;
  - targets and outcomes expected;
  - identify any training required;
  - coaching by a supervisor or skilled colleague;
  - provision of any aids or equipment, where required, especially in order to provide the necessary reasonable adjustment in the case of disabled employees;
  - permanent or temporary alteration to duties which do not change the nature of the job but allow time to focus on the areas for improvement;
  - referral to Occupational Health Service;
  - identify any resource issues or working practices that need to be addressed.
- 4.8 A written account of the interview/discussion must be taken that highlights the key points and any action to be taken. . The employee must be informed that they are in the informal part of the Managing Employee Performance Procedure at this stage.
- 4.9 Individuals learn at different rates and in different styles and the level of poor performance may be complex. Therefore, it is necessary for a reasonable period of time to be given for performance to improve. As a guide, no action plan

should be for a period of less than four weeks (unless the performance decline is so acute as to cause severe operational difficulties) or more than twelve weeks. During this period any identified training will be delivered. Consideration may be given to extending agreed review periods if annual leave or sickness absence has occurred within the set timeframe.

- 4.10 If there is an improvement in performance and identified targets are met, the employee should be informed of this, in writing, and informed that the situation will continue to be monitored for a period agreed by both parties.
- 4.11 Where an employee is either in the informal or formal part of the Managing Employee Performance Procedure, they will not be eligible for incremental progression. If performance reaches the required standards during the performance management cycle then the increment should be implemented effective from the date that satisfactory performance is reached.

## **5. SUDDEN AND ACUTE POOR PERFORMANCE**

- 5.1 Where an employee's performance suddenly causes alarm or concern, the employee should be referred to the Council's Occupational Health Service for guidance on whether there are any underlying reasons for the poor performance, e.g. health issues, substance misuse. Occupational Health may be able to advise on the nature of the issue, possible treatment and any suitable support or adjustments that can be offered to assist the employee in carrying out their duties. Dependant on the circumstances, it may be necessary to consider the relevance of the provision of other School policies and procedures, e.g. Managing Attendance, Drug, Alcohol and Substance Misuse. It will also be necessary to consider whether the Equality Act may apply.
- 5.2 In exceptional circumstances of sudden and acute poor performance, in the context of providing support and protection to the employee, the line manager may consider progressing directly to formal stage one of the procedure but is required to discuss the matter with Human Resources.

## **6. FORMAL STAGE ONE - PERFORMANCE IMPROVEMENT MEETING**

- 6.1 Where there has been no improvement in performance and agreed targets have not been met, the line manager may decide that the performance problems need to be addressed through a more formal process. Stage one of the formal process is similar to the informal process. However, a meeting separate from the PR&D/supervision process will be arranged and the employee can be accompanied at the meeting by a trade union representative or work colleague. The employee should be given at least 5 working days' notice of the meeting, a copy of the procedure, and an outline of the reasons for the interview. A Human

Resources Business Partner may also be involved at this stage to advise and support the line manager.

N.B. For employees who are recognised trade union representatives no formal action will be taken prior to discussing the case with the relevant trade union's Full Time Officer.

- 6.2 At the meeting, the line manager must inform the employee of all concerns and explain that the purpose of the discussion is to:
- establish the facts by hearing from the employee his/her interpretation of the problem and any personal difficulties experienced by them that have contributed to the poor performance; and
  - try and agree a course of action that will hopefully result in improved performance.
- 6.3 The discussion should be a two way process, setting future performance standards.
- 6.4 An action plan must be agreed and written down which will include/involve all or some of the following:
- further monitoring of performance;
  - a further review period and dates;
  - targets and outcomes expected;
  - regular review meetings between line manager and employee
  - identify any training required;
  - coaching by a supervisor or skilled colleague;
  - provision of any aids or equipment, where required, especially in order to provide the necessary reasonable adjustment in the case of disabled employees;
  - permanent or temporary alteration to duties which do not change the nature of the job but allow time to focus on the areas for improvement;
  - referral to Occupational Health Service;
  - identify any resource issues or working practices that need to be addressed.
- 6.5 A written account of the meeting/discussion must be taken that highlights the key points and any action to be taken.
- 6.6 Individuals learn at different rates and in different styles and the level of poor performance may be complex. Therefore, it is necessary for a reasonable period of time to be given for performance to improve. As a guide, no action plan should be for a period of less than four weeks or more than twelve weeks. During this period any identified training that is agreed by both parties should be

delivered. Consideration may be given to extending agreed review periods if annual leave or sickness absence has occurred within the set timeframe.

- 6.7 If at the end of the review period there is an improvement in performance and identified targets are met, the employee should be informed of this, in writing, and that the situation will continue to be monitored for a period agreed by both parties.
- 6.8 If, at the end of the review period, there is no real improvement, or the expected level of performance has not been attained, the employee will be invited to a formal improvement review meeting at Stage two.

## **7. FORMAL STAGE TWO - IMPROVEMENT REVIEW MEETING**

- 7.1 The line manager will convene a improvement review meeting giving at least 5 working days' notice unless a variation to this is mutually agreed. The line manager may wish to be advised by a Human Resources Business Partner at this stage. The employee will have the right to be accompanied by a Trade Union representative or work colleague.
- 7.2 Prior to the meeting, the line manager will inform the employee in writing of the details of the continuing cause for concern which will include:
- the continued reasons for concern;
  - progress against the action plan and full details of the areas of work performance that are still judged to be unsatisfactory;
  - the date, time and venue of the meeting, which must be at least 5 working days after receipt of the letter giving the formal notice of the meeting;
  - the right to have a trade union representative or work colleague present and for that person to have copies of all paperwork; and
- 7.3 If some progress has been made and there is confidence that more progress is likely, it may be appropriate to extend the review period for a further short period of time.
- 7.4 If this decision is made a date for the re-convened formal review meeting should be arranged and confirmed in writing within 5 working days along with an improvement plan (where applicable), which will indicate any further review periods. The letter will also outline the consequences of the employee failing to improve his/her performance by the set target date. This should include formally notifying the employee that if progression to stage 3 of the procedure is necessary, the outcome of this stage may be the termination of their employment.



- 7.5 If, following the extended period of review there is a satisfactory improvement in performance and identified targets are met, the employee should be informed of this, in writing, and that the situation will continue to be monitored for a period agreed by both parties. At the end of this period, the employee will be notified in writing of the outcome.
- 7.6 Alternatively, if following the review of performance at the Stage Two meeting, no, or insufficient progress is deemed to have been made, the employee will be invited, in writing, to a Stage 3 Capability Hearing. This letter will also confirm the reasons for the decision to move to Stage 3. The employee must be informed that an outcome of this stage may be the termination of their employment.

## **8. FORMAL STAGE THREE - CAPABILITY HEARING**

- 8.1 The Headteacher/Governing Body Panel should hear the case. If continued unsatisfactory work performance is established at this hearing, the Headteacher/Governing Body Panel hearing the case may take appropriate action as follows:
- demotion;
  - permanent job adjustment or transfer to another job; or
  - termination with notice.
- 8.2 Employees should be given at least ten working days' notice of the Capability Hearing, which will give them details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work based colleague or trade union representative. The employee should be made aware of the names of any individuals the manager will be asking to give information/evidence in support of their concerns.
- 8.3 The employee should be informed of their right to ask individuals to give information/evidence in support of him/her, provided that their names are submitted to the manager in advance of the hearing, together with copies of any documentation they wish to submit at the hearing.
- 8.4 Copies of the information should also be sent to the officer hearing the case, the HR Business Partner advising at the hearing and the relevant Trade Union, if known.
- 8.5 At the hearing, the line manager will present the case, supplying all appropriate evidence in respect of target setting, outcomes and progress of agreed action plans. The employee will have the opportunity to respond by explaining his/her position and is entitled to question any statements. (Whilst it is expected that the employee should respond personally to the case presented, it is recognised that

assistance may be sought from the trade union representative or work colleague).

- 8.6 The purpose of the hearing is to establish the facts and for the officer hearing the case to be certain that all reasonable steps have been taken to try to support, assist and train the employee to reach a satisfactory level of work performance and to take remedial action where appropriate.
- 8.7 At the end of the hearing (or during an adjournment) the parties will leave, but the HR Business Partner advising the officer hearing the case will remain present throughout to advise and oversee the process.
- 8.8 The officer hearing the case will make a final decision based on the evidence. The officer hearing the case will reconvene the hearing and indicate the outcome to the employee immediately after the hearing, whether there are any continuing requirements for improved work performance and associated conditions e.g. further review period, training or supervision, or medical referral.
- 8.9 Where the outcome of stage three is demotion or permanent job adjustment, a new contract and job description will be agreed with the individual. Salary will not be protected under these circumstances.
- 8.10 The sanction determined by the Headteacher/Governing Body hearing the case will be confirmed in writing to the employee within 5 working days together with confirmation of the right of appeal and the process for exercising this right of appeal.
- 8.11 If a decision to dismiss is made, voluntary aided schools are advised to discuss the matter with the local authority and community and voluntary controlled schools must discuss the matter with the local authority. The power to dismiss staff in schools rests with the Governing Body, however for community and voluntary controlled schools this will need to be confirmed with the local authority.

## **9. APPEALS PROCEDURE**

- 9.1 The employee has the right to appeal against the decision at stage three, provided that (s) he does so in writing within 10 working days of receipt of the written notification. The letter should be addressed to the Head teacher/Chair of the Governing Body Panel who heard the case at stage three. The grounds of the appeal must be stated in the letter.
- 9.2 The grounds for appeal may include for example: the severity of the outcome, new significant evidence coming to light or alleged procedural deficiencies.

- 9.3 The Appeals Committee of the Governing Body will hear the appeal. The Appeals Committee will consist of a minimum of 3 Governors who were not involved in the previous decision making. The Appeal Committee will review all evidence presented by the Headteacher/Governing Body and employee and should have access to impartial advice from a HR Business Partner (who has not been involved in the case previously).
- 9.4 The decision of the Appeals Committee will be final. A statutory right to access an Employment Tribunal is not affected.

## **10. MONITORING, EVALUATION AND REVIEW**

- 10.1 The Governing Body of the School has specific responsibility for monitoring the effectiveness of this procedure. This procedure is monitored, evaluated and reviewed annually to ensure it is kept up to date and meets legislative and best practice requirements. This will be undertaken in consultation with the appropriate negotiating bodies.
- 10.2 To ensure we are applying our policies and procedures fairly and in line with any relevant legislation, statistical information will be collated and kept. No personal details will be used inappropriately or made available to other sources except to report on the overall numbers relating to disability, ethnicity and gender of employees who have been involved with the Managing Employee Performance Procedure.
- 10.3 All recorded data is stored and handled in accordance with the Data Protection Act.
- 10.4 Key information derived from evaluating this procedure will be collated for monitoring purposes and will be analysed in conjunction with service specific action plans to obtain an understanding of how our policies and procedures work in creating equality of opportunity. Appropriate action will be taken to address any particular obstacles or difficulties that are identified.

## **11. FURTHER INFORMATION**

- 11.1 Further advice and guidance on this procedure or a specific case can be obtained from the HR Advisory Service.
- 11.2 If you would like to comment on the content of the procedure, please contact HR Advisory Service.
- 11.3 The procedure is also available in alternative formats such as Braille, large print, on audio tape or community languages if requested.



## PROCEDURE FOR STAFF DISMISSAL/APPEAL HEARINGS

The procedure to be adopted at any dismissal or appeal hearing will normally be:

- 1 The dismissal hearing will be conducted by the Headteacher and the appeals hearing conducted by the Governing Body (except under point 15 below).
- 2 One or more advisers, who may be from the Local authority, must assist the person or panel conducting the hearing in the conduct of the hearing.
- 3 The person/group conducting the hearing will be satisfied that the employee understands the purpose of the hearing, the nature of the issue(s) and the possible implications arising from it.
- 4 The case against the employee will normally be presented by the person who has investigated the matter or such other person with sufficient knowledge. The person presenting the case will describe the case and the presentation may include witnesses, written statements or other documents where these are considered necessary. (If written statements or other documents are to be presented, copies of these should normally be sent to the employee and/or their representatives with the letter convening the hearing).
- 5 The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
- 6 The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of his/her case. (Where it is the intention to submit written Statements of Case these must be exchanged by both sides at least three working days prior to the hearing.)

Where witnesses are School or Borough Council employees, they should be given reasonable time off with pay to attend the hearing.

- 7 The person presenting the case will be given the opportunity to question the employee, his/her representative and any witnesses called in his/her defence.

- 8 At any stage during the hearing the person/panel conducting the hearing and any adviser(s) may ask questions of the employee, the person presenting the case or such other persons, as they may consider appropriate in order to ascertain the facts and arguments. The employee's representative should be allowed to make representations on their behalf as requested. The formulation of views before the end of the hearing should be avoided.
- 9 The person presenting the case will then be invited to make a closing statement not introducing any new material.
- 10 Finally the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.
- 11 Both parties will withdraw to allow the person/group conducting the hearing to review and consider the evidence in conjunction with any advisers.
- 12 If the person/panel conducting the hearing require clarification of any point(s) of the case both parties must be recalled in order for questions to be asked of either side.
- 13 The person/panel conducting the hearing will then recall both parties to inform them of his/her/their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately, the parties should be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery with a copy to the trade union or other representatives.
- 14 If it is felt that the details of the case may prove traumatic for any individual involved, including witnesses, support via Occupational Health will be offered at the outset of the proceedings.
- 15 Any officer involved throughout the procedure cannot be part of the dismissal panel. This includes the Headteacher if they have been in control of the Managing Employee Performance procedure. Under these circumstances school may revert to the previous procedure whereby a Governing Body Staff Dismissals Panel is formulated as well as a Governing Body Staff Dismissal Appeals Panel. Human Resources will advise the Headteacher and governors as appropriate to each individual case.