



# **Managing Unsatisfactory Performance and Capability Procedures**

For Employees in LDBS Voluntary Aided,  
Schools

London Diocesan Board for Schools  
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## **1. INTRODUCTION**

1.1 The Governing Body will aim to provide a consistently outstanding education for our pupils. This can only be achieved through the very highest standards of performance from all school staff.

1.2 For the purposes of this procedure, incapability will be defined as:

- An employee's inadequate performance which can arise for various reasons and which may be due to an employee's lack of knowledge, skills or aptitude for the position to which they are appointed.
- Incapability due to ill health will be managed through the school's Managing Sickness Absence Policy.

1.3 This procedure will be managed with care and attention, in order to allow employees the opportunity to improve, to avoid the need for dismissal in the event that they are unable to meet the required standards.

## **2. PURPOSE**

2.1 This Procedure provides a consistent and fair framework for dealing with issues of inadequate employee performance. It will also ensure that a mechanism is in place to help employees to achieve and maintain a high standard of performance.

2.2 This procedure will not be used as a substitute for other employment practices, such as the induction of new or newly promoted employees and well managed performance management. Performance should be discussed regularly as part of the employee's day to day supervision and under-performance should be identified and addressed as early as possible to avoid formal capability procedures being invoked. However, there will be occasions where a formal approach is necessary to address under-performance.

## **3. SCOPE**

3.1 The procedure applies to all employees both teaching and support staff employed in the school who either have a permanent contract of employment, or are fixed term employees with more than two terms' continuous service. It does not apply to employees subject to probation who will be subject to the probation procedure.

If there are concerns about performance as a result of the employee's negligence or wilful failure to carry out their duties and responsibilities following an investigation, the matter will be addressed in accordance with the disciplinary procedure.

## **4. EQUAL OPPORTUNITIES**

4.1 This capability procedure will always be applied fairly and in accordance with the Equality Act 2010.

## **5. DATA PROTECTION**

5.1 The policy will be implemented in adherence to GDPR regulations in relation to the distribution, sharing and storage of information pertaining to any individuals involved in this procedure.

## **6. INFORMAL PROCEDURE**

6.1 The employees' line manager will raise concerns regarding an employee's performance as part of normal management processes in the first instance. The line manager should explain very clearly where the performance falls below standard, identify possible causes of the problem and discuss with the employee how best to support them to improve and to reach the required standard.

6.2 Where inadequate performance persists, the employee will be invited to a meeting with their line manager to discuss their performance. The employee will be advised in writing that they may be accompanied by a trade union representative or work colleague. Informal support will be provided for a clearly defined and reasonable timescale. This timescale must allow sufficient time for concerns to be communicated and offer the employee the opportunity to achieve the required standards (usually around half a term). The line manager must explain the consequences of continued inadequate performance to the employee and confirm the main points of the discussion. The line manager may be accompanied by an adviser from HR in any meetings where the employee is accompanied by a representative.

6.3 In cases where there is particularly serious concern, such as the health and safety of others being placed at risk or the education of children is in jeopardy, the formal procedure can be commenced immediately without the need for referral to the informal stage.

6.4 If the Executive Headteacher or Headteacher becomes subject to formal stage of this procedure the Chair of Governors will conduct all meetings or may nominate another governor to lead on the process. The Chair or their representative may request that an education adviser may attend the meetings to provide professional expertise to assist the Chair or relevant governor as well as an HR adviser. The Executive Headteacher or Headteacher may be accompanied by a trade union representative or work colleague.

## **7. FORMAL PROCEDURE**

### Stage 1

7.1.1 If, after informal support, performance continues to fall short of the required standard, the formal procedure will apply. The focus of the formal procedure remains enabling the employee to maintain a sustained improvement and to reach the required standards if possible.

7.1.2 The Executive Headteacher, Headteacher, or relevant senior manager will invite the employee to a meeting where they can be supported by a trade union representative or work colleague. The employee will be provided in writing with a:

- Summary of relevant information gathered as part of any investigation
- A copy of any relevant documents which will be used at the capability meeting

- A copy of any supporting statements which are relevant including those from professional advisers or consultants

7.1.3 At the meeting, a discussion will take place to:

- Set out the required standards that the school believes the employee may have failed to meet, and examining the evidence gathered
- Allow the employee to ask questions, present evidence, respond to evidence and make representations
- Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement
- Establish the best means of rectifying the grounds for concern, such as appropriate support being identified and agreed. If no agreement can be reached the Executive Headteacher, Headteacher or relevant senior manager will decide what actions can be introduced to help to overcome the problem.

7.1.4 Such actions could include:

- A change in working practices within the terms of reference of the employee's responsibilities;
- Referral to OHU for medical advice;
- Relevant training;
- Advice and support from within the school and also external expert advisers if appropriate;
- Closer and supportive supervision for a fixed period;
- If dismissal is a possibility, deciding whether there is likely to be any significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment;

7.1.5 The employee will be informed in writing of the outcome of the meeting including any programmes of action that was agreed with review dates which will normally take place at least every four weeks.

7.1.6 Following this meeting the employee may receive a first written warning (which will remain on file for 12 months), setting out:

- The areas in which the employee has not met the required performance standards
- Targets for improvement (targets may be adjusted throughout the process until the required standard has been achieved)
- Any measures which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period or further unsatisfactory performance

7.1.7 The employee's performance will be monitored during the review period and they will be informed in writing of the outcome:

- If the employee has performed to the required standards, no further action will be taken;

- If their performance has not been satisfactory, the case may be progressed to Stage 2 capability meeting;
- If the employee has made substantial but insufficient improvement the period of review may be extended

## Stage 2

7.2.1 If the employee's performance does not improve within the review period set out in Stage 1 or if there is further evidence of poor performance while a first written warning is still active or if the poor performance is very serious in nature, the Executive Headteacher, Headteacher or relevant senior manager may decide to hold a stage 2 capability meeting.

7.2.2 Following a stage 2 capability meeting, if it is decided that the employee's performance is unsatisfactory, the employee will receive a final written warning (which will remain on file for 12 months), setting out:

- The areas in which the employee has not met the required performance standards;
- Targets for improvement;
- Any measures which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

7.2.3 The employee's performance will be monitored during any review period and the Executive Headteacher, Headteacher or relevant senior manager will write to inform them of the outcome:

- If the employee's performance is satisfactory, no further action will be taken;
- If the employee's performance is not satisfactory the matter may then progress to a stage 3 capability meeting
- If the employee has made substantial but insufficient improvement the period of review may be extended.

## Stage 3

7.3.1 A stage 3 capability meeting will be held if:

- The employee's performance has not improved sufficiently within the review period set out in the final written warning;
- The employee's performance is unsatisfactory while a final written warning is still active;
- The employee's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning

7.3.3 If a senior manager has been managing the process then this meeting may be held with the Executive Headteacher or Headteacher who will determine the outcome, if the informal and stage 1 capability meetings have been managed by the Executive Headteacher or Headteacher then the stage 2 meeting will be held in front of a panel of three members of the governing body nominated by the Chair, to determine the outcome.

7.3.4 Following the meeting, if the employee's performance has been found to be unsatisfactory this could result in one of the following:

- Dismissal;
- Redeployment to another suitable job within the school;
- Extending the final written warning and setting a further review period;
- Giving a final written warning (where no final written warning is currently active)

## Appeal

7.4.1 An employee may appeal any warning issued in accordance with this procedure. To do so the employee must set out in writing the grounds for their appeal within 5 working days of being notified of the outcome.

7.4.2 The Appeal will be heard by a committee of the governing body.

7.4.3 The appeal committee will review all the information available and determine whether the sanction was reasonable, whether further information is needed, or a further review period.

7.4.4 The employee will be given 10 working days' notice of the appeal hearing in writing and may be accompanied by a trade union representative or work colleague. The employee may submit any new information including statements from witnesses within 5 working days of the date of the hearing.

7.4.5 The appeal committee may decide to:

- Accept the appeal and remove the sanction;
- Accept the appeal and impose a lesser sanction or further review;
- Reject the appeal and confirm the penalty imposed;

7.4.6 The outcome of the hearing will be notified to the employee in writing within 5 working days.

7.4.7 The capability procedure may run concurrently with other procedures, such as grievance and disciplinary procedures.

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