


Staff Capability Policy

Saint Nicholas School



Approved by:	 Headmaster Chair of Governors	Date: 26/09/2022
Last reviewed on:	08/09/2022	
Next review by:	08/09/2024	

This policy applies to all sections of the School including EYFS

Introduction

This policy:

1. Is non-contractual in nature;
2. Applies to all members of staff except those who have not completed their probationary period;
3. Can be adjusted by the School to suit specific circumstances;
4. Can be varied unilaterally by the School.

The primary aim of this policy is to provide a framework within which the School can work with employees to maintain satisfactory performance standards (as measured against DfE Teachers' Standards in the case of teaching staff) and to encourage improved performance where necessary. The School recognises the difference between a deliberate or careless failure on the part of an employee to perform to the standards of which he/she is capable (in which case the School will use the disciplinary procedure) and a case of incapability, where the employee is lacking in knowledge, skill or ability and so cannot perform to the standard required (in which case the School will use this capability procedure in an attempt to improve the employee's performance).

The School also recognises that during an employee's employment capability to carry out his/her duties may deteriorate. This can be for a number of reasons; the most common ones being for personal reasons or health issues, the job changes over a period of time and the employee fails to keep pace with the changes, or the employee can no longer cope with the work. Where responsibility for poor performance lies partly or wholly with the individual employee, the School will give encouragement and support to an employee who is willing to take reasonable steps towards resolving the issue.

This policy aims to ensure fairness and consistency throughout the School and provides for warnings to be given for failure to meet its standards of job performance. All members of staff should familiarise themselves with the provisions of this policy. If the Headmaster's performance is being managed in line with this policy then the Chair of the Governors will be responsible for overseeing the procedure.

Minor capability issues may be dealt with informally through counselling and training. Informal discussions will be held with a view to clarifying the required work standards and the level of performance expected of the employee, identifying areas of concern, establishing the likely causes of poor performance, identifying any training or supervision needs, setting targets for improvement and agreeing a time-scale for review.

In cases where informal discussion with the employee does not lead to a satisfactory improvement in performance within the stated timescale, or where the performance issues are more serious, the capability procedure set out below will be followed.

At all stages the School will give consideration to whether the unsatisfactory performance is related to a disability and, if so, whether there are any reasonable adjustments that could be made to the requirements of the employee's job or other aspects of the working arrangements.

The procedures set out in this document aim to ensure that there is:

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- openness and awareness when employees are not meeting the required levels of performance;
- a means of monitoring performance and establishing performance criteria;
- consistency to ensure that employees are given opportunities to attain satisfactory levels of performance;
- assistance in identifying the most appropriate form(s) of support and how the School can help employees meet performance requirements;
- confidentiality of statements, letters and other communications for all involved in the process.

1. Right to be accompanied

An employee will have the statutory right to be accompanied at any formal meeting which could result in:

- a formal written warning being issued;
- the taking of some other disciplinary action;
- the confirmation of a warning or some other disciplinary action (appeal hearings).

The chosen companion may be a fellow employee, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee.

The companion should be allowed to address the hearing 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 during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

The employee is expected to make all arrangements for their companion to attend meetings. Where the chosen companion cannot attend on the date proposed, the employee can propose an alternative time and date so long as it is reasonable and is within ten days of the original meeting.

2. Performance Warnings

The employee must take all reasonable steps to attend all hearings. In the event that the employee fails to attend, it will be re-arranged once but should he/she fail to attend the re-arranged hearing then a decision will be reached in his/her absence.

Audio and video recording of meetings is not permitted.

Level 1 – Formal Meeting (Written warning)

In the case of serious shortfall in performance, or failure or a repetition of earlier shortfall or failure and where coaching or other informal action is not considered appropriate or has not succeeded in addressing the problem, the Headmaster (accompanied by a member of the Senior Leadership Team) will meet with the employee to discuss the issues. The Headmaster will outline the performance issues that have led to the meeting and the employee will be given the opportunity to state his/her case and raise any factors he/she wishes to have considered. If, in the view of the Headmaster, the employee is unable to provide a satisfactory explanation for the performance shortfall, he/she will be advised of:

- the improvement in performance required;
- the timescale for improvement;
- date of review meeting;
- any support to be received;
- the likely consequence of not meeting the performance targets;

A written warning will in that case be issued and the above will be confirmed in writing to the employee within ten days of the original meeting. The employee will also be advised of his/her right of appeal. A copy of the letter will be retained on the employee's personal file for a period of six months.

Level 2 – Formal Meeting (Final written warning)

If the problem is more serious, or if there has been a failure to meet the performance targets set at the first formal meeting, the employee shall be invited in writing to a level 2 formal meeting, with at least ten days' prior notice. The letter inviting the employee to the meeting shall set out the issues to be considered. The meeting will be conducted by the Headmaster (accompanied by a member of the Senior Leadership Team). The Headmaster will outline the performance issues that have led to the meeting and will review the circumstances of the case and the actions taken to date. The employee will be given the opportunity to state his/her case and raise any factors he/she wishes to have considered.

If no satisfactory explanation is given for the failure to meet the required standard of performance, the Headmaster will write to the employee with a final written warning within ten days. The letter will indicate:

- the improvement in performance required;
- the timescale for improvement;
- date of review meeting;
- any support to be received;
- the consequence of not meeting the performance targets within the set period, i.e. that it may result in dismissal or some other penalty such as demotion or loss of seniority.

The employee will also be advised of his/her right of appeal. A copy of the letter will be retained on the employee's personal file for a period of twelve months.

Level 3 - Dismissal

If the employee does not improve as specified in the final written warning issued under level 2 above, the employee shall be invited to a formal dismissal hearing with the Headmaster.

The meeting will take the form of a hearing conducted by Headmaster (accompanied by a member of the Senior Leadership Team).

A letter will be sent to the employee, ten days before the hearing, detailing the grounds that have led to the meeting, providing copies of papers that will be considered at the meeting and inviting him/her to make any written submissions. He/she will also be advised that one consequence of the hearing may be the termination of employment.

The Headmaster will consider the facts of the case and any representations made. On the basis of the information presented the Headmaster may decide on the following outcomes:

- that there are insufficient grounds to dismiss the employee under this procedure;
- to impose, extend or renew a warning or final written warning issued under this procedure;
- to withhold an increment of salary;
- to remove any title or office held in addition to the substantive appointment;
- that the employee should be dismissed on grounds of capability (with appropriate notice);
- to demote or transfer the employee to an alternative post within the School;
- that matters should be considered under an alternative procedure.

The above list is not exhaustive and the outcome may be varied according to the circumstances of the case.

If an employee is dismissed, he/she will be provided with a written statement detailing the reasons for dismissal, the date on which employment will terminate and the right of appeal.

3. Appeal

An employee may appeal against a decision within ten days of receipt of the written decision. Such appeals are to be made in writing to the Headmaster and should state the grounds on which any appeal is based.

The appeal hearing will be convened as soon as is reasonably practicable. The appeal hearing will be held by a Governor at Level 1 and Level 2 of the process (different Governors at each stage with no prior involvement) and by a panel of up to three Governors (who have had no prior involvement) at Level 3. Where new evidence arises prior to or during the appeal the employee will be given

access to any relevant information or evidence and will have the opportunity to make representations. The employee will have the right to be accompanied at any appeal hearing by a colleague or trade union representative. The employee will be informed in writing of the decision of the appeal hearing following the conclusion of the hearing. Such decision will be final. In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand.

If the employee's performance shortfall, or failure, is dealt with under the formal performance improvement procedure, a record will be kept of; the shortfall or failure, the employee's defence or mitigation, minutes of the capability hearing, the action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records are confidential and will be retained on the employee's personal file for the relevant period of time specified in this policy in accordance with the Data Protection Act 1998.

The School will inform the Secretary of State for Education if an employee is dismissed on the grounds of capability.

Examples

The following are non-exhaustive and non-exclusive examples of the sort of performance shortfalls or failures, which will normally lead to action being taken.

Minor offences (informal oral warning)

- Occasional poor job performance involving sub-standard work or application.
- Failure to meet deadlines
- Serious offences (written or final written warning)
- Consistent poor performance or application;
- Consistent failure to meet deadlines
- Failure to improve performance following an appraisal meeting or performance review, within the timescale specified within such a meeting or review;
- Failure to perform duties or roles to an acceptable standard for reasons which it is within the employee's power to rectify.

The employee should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

Capability and consistent performance offences (dismissal with notice)

- Incapable of or unsuitable for performing role or main job functions/duties as set out in job description which could not be rectified by training or coaching;
- Consistent failure or unable to improve performance to required standards;
- The employee is unable satisfactorily to do or does not have the qualifications, aptitude and/or ability for the job.

5. Sickness absence

Where an employee's underperformance is a result of sickness absence then the School will always seek medical advice prior to making a decision about an employee's on-going employment. The School will also consider whether there are any reasonable adjustments which can be made to assist the employee to perform his/her role.

Should the employee be signed off sick by a doctor due to short-term illness during the capability procedure, the School will consider postponing hearings where it is likely that he/she will be well enough to attend in the near future (within two working weeks). If this is not likely then the School can proceed with the hearing, either by zoom or some similar video conferencing facility or, in exceptional circumstances, in the employee's absence.

If the employee is on long-term sick leave, the School will balance the need to proceed with the process without undue delay with the employee's right to put his or her case forward. Where the employee is not fit to work, he/she may still be fit enough to attend and the School will consider whether any reasonable adjustments should be made - such as visiting the employee at home or at a neutral location in order to facilitate his/her attendance. If an employee on long-term sick leave is not well enough to attend a meeting, the School will consider postponing the hearing until the employee is well enough to attend. If this is not likely to be in the near future, then the School can proceed with the meeting by zoom or some similar video conferencing facility or, in exceptional circumstances, proceed with the hearing in the employee's absence.

6. Relationship with Disciplinary and Grievance Procedure

The employee may be dismissed following completion of the formal capability procedure and have no separate right to have the disciplinary and grievance procedure followed prior to dismissal.

If an employee raises a grievance during the capability process, capability may be temporarily suspended in order to deal with the grievance.

Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the capability procedure, and vice versa.