

# **RUGBY HIGH SCHOOL SUPPORT STAFF CAPABILITY PROCEDURE**

## **1. FIRST PRINCIPLES**

Rugby High School values all staff and the contribution they make to support teaching and learning in the school. From time to time, however, there will be occasions when an individual's performance falls short of that which is required.

Good leadership, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review will be utilised to avoid the need for formal capability procedures. Every effort will be made to provide informal support and guidance to address such weaknesses.

However, in some cases, a more formal approach will be necessary.

This Capability Procedure sets out the process that will be followed in such cases and outlines the timescales for improvement that will be applied.

This procedure has been adopted by the Governing Body and closely mirrors the model procedure recommended by the Department for Children Schools and Families.

This procedure will be used for all staff where there are concerns about an employee's capability. If it is an issue of an employee's conduct, then the School's Disciplinary Procedure will be applied.

An employee subject to the formal stages of this procedure is entitled to be represented throughout the process by a colleague or union representative.

## **2. INFORMAL STAGE**

Where an employee may be under-performing, the head teacher or other line manager should investigate and collect evidence. Once the facts are gathered and the seriousness of the problem established there are three initial options:

- Drop the matter (no case to answer or trivial)
- Arrange counselling (support without using the formal procedure)
- Arrange a formal interview (formal approach for more serious cases)

### **Counselling**

Counselling and informal coaching should aim to encourage and help the employee to improve. It should be conducted discreetly. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer. The employee must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement. Counselling should not go on for longer than a term. A brief note of any counselling should be kept for reference.

Discussion must not harass the employee or turn into a formal interview. If more

serious concerns arise, or if the employee expresses discontent or indifference to the counselling, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

After a period of review involving observation and assessment a firm conclusion should be reached. The options will be either to;

- drop the matter; or
- convene a formal interview.

### **3. FORMAL STAGE**

#### **Formal interview**

The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way. It allows the employee to prepare a response to allegations about performance and make a case in the company of a union representative or colleague. At least 5 working days' (or 7 consecutive days' out of term time) notice must be given for the interview.

The interview may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed, the interview should be adjourned for an appropriate length of time to allow this to happen.

There are four options at formal interview;

- drop the matter
- counselling (except where already undertaken without improvement)

These are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed.

- oral or written warning
- final written warning

These are relevant to any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory a written warning will normally be the next step and will invoke an assessment period of up to two terms. An oral warning should not normally be necessary in cases where counselling has already taken place. In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to move directly to a final written warning. This will invoke an assessment period not exceeding 4 weeks.

A decision should be made after all the facts and any representations from the employee have been considered. The head teacher or line manager should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee. Any appeal against a warning must be made within 5 working days (or 7 consecutive days out of term time), and heard within 10

working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Where a formal warning is issued, the head teacher or manager should use the remainder of the meeting to;

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to end the capability procedure;
- explain the support that will be available, and how performance will be monitored over the following weeks;
- depending on the level of warning issued, identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
- make it clearly understood that failure to improve may lead to dismissal.

A letter should be sent to the employee immediately after the formal interview recording the result of the investigations and the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage.

### **First assessment stage**

**Weeks 1 to 20** - 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 circumstances suggest a more serious problem, a decision may be taken to move directly to a final written warning.

**Week 20** – Evaluation meeting to assess performance over the previous weeks. At least 5 working days' (or 7 consecutive days out of term time) notice must be given for the meeting and the employee may be accompanied by a union representative or colleague. If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure can end here with a letter from the headteacher.

If performance continues to be unsatisfactory, a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The employee must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the employee. Any appeal against a final warning must be made within 5 working days (or 7 consecutive days out of term time), and heard within 10 working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

### **Second assessment stage**

**Weeks 20 to 24** - Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

**Week 24** - Final evaluation meeting to report the assessment of performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) 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 with a letter from the headteacher.

If performance is unsatisfactory the employee should be told that the matter will be referred to the governing body Staff Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known), should be recorded in a letter to the employee.

#### **4. Dismissal committee stage**

The governing body should set up a Staff Dismissal Committee with at least three governors. This must hear the representations and recommendations brought by the head, or other line manager conducting the capability evaluation, and any representations that the employee may wish to make.

#### **5. Appeals (against action short of dismissal)**

Appeals concerning any stage of the process (except dismissal) may be heard by the headteacher (if the Head has not been directly involved in the process) or, otherwise, by a panel of governors.

Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities.

An employee is entitled to be accompanied at an appeal hearing by a colleague or union representative. The appeal decision should be confirmed in writing and the employee told that there is no further appeal against the decision.

Where the reasonableness of the decision is being questioned, the test that should apply for overturning a formal warning is that the decision was so unreasonable that it was one that no other head or manager, acting with proper regard to his or her responsibilities, could have chosen to take. Where an appeal is upheld, the matter should be referred back to the head or manager to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

#### **6. Appeals against dismissal**

The governing body will also set up a Staff Appeal Committee to hear any appeal against a dismissal decision. None of the governors on the Staff Dismissal Committee should be on the Staff Appeal Committee.

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