St John and St Nicolas Schools Federation

For the good of all through curiosity, creativity and love

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St John and St Nicolas Schools Federation
Capability issues due to ill health procedure

At St John and St Nicolas Schools Federation, our vision is 'For the good of all – through curiosity, creativity and love.' This vision inspires everything that the federation does. It applies equally to all the federation's policies with the intention that our policies impact as fairly and positively as possible to meet the needs of all members of our schools' community.

1. Purpose

1.1. This procedure has been written to support managers in handling capability issues where the cause of the underperformance is due to ill health or disability.

1.2. This model procedure has been developed for use in West Berkshire schools, in consultation with recognised trade unions. All maintained schools are recommended to adopt this procedure.

2. Applicability

2.1. This procedure applies to all employees of the school, including head teachers.

2.2. The application of the procedure may be modified for the following staff, where concerns about performance may be handled under procedures other than those specified in section three:

2.2.1. Early Career Teachers within their statutory induction period

2.2.2. Support staff within their probationary period.

3. What is lack of capability due to ill-health and which procedure should be used to manage it?

3.1. All employees are expected to achieve and maintain satisfactory standards of performance. Sometimes employees do not achieve the required standard. This may be due to various reasons:

3.1.1. Wilful disregard of the required standards, management instructions and/or rules – such cases are normally to do with conduct rather than capability and should be handled under the school's disciplinary procedure.

3.1.2. High levels of sickness absence – such cases are normally handled under the school's procedure for managing sickness absence. This procedure would also normally be used to support an employee returning to work from a period of long term sickness absence in making a successful return to work.

3.1.3. Lack of aptitude, ability or skill – such cases are normally handled under the school's capability procedure.

3.1.4. Ill health or disability – the employee may be attending work, but their ability to perform the job to the required standard is affected by their health or disability. It is normally appropriate to use this procedure.

4. Roles and responsibilities

4.1. Head teachers/ line managers and the governing board are responsible for implementing this procedure when required.

4.2. Head teachers/line managers are responsible for ensuring staff receive appropriate training and support and receive adequate feedback on performance.

4.3. Where schools purchase the West Berkshire Council Human Resources (HR) service, HR staff will provide head teachers/line managers with specialist advice/on which is the appropriate procedure to use, provide support outlined in this procedure, and refer employees for confidential counselling or occupational health advice where requested. Schools that do not buy the HR service should seek advice from their own HR providers. Referrals for counselling or to occupational health can be made via West Berkshire Council HR for a charge.

4.4. Employees are responsible for performing the duties of the post to the best of their abilities and in accordance with any specified regulations or performance standards. Employees are also responsible for complying with the requirements of this procedure.

5. Principles

5.1. Employees subject to this procedure have the right to be accompanied by a work colleague or trade union representative during all stages of the formal process. The representative should be identified to management in advance and should not be someone whose presence would prejudice the meeting or who might have a conflict of interest. If the representative is a work colleague they will be entitled to take reasonable time off to prepare for and attend the meeting/hearing and confer with the employee following the meeting/hearing.

5.2. The Corporate Director for Communities and/or representative has the right to attend any hearing convened to consider dismissal or appeal against dismissal for the purpose of providing advice to the panel. Such advice will be given to the panel only (in the same way that the employee and the management representative may receive their own advice) and must be considered by the panel before making a decision.

5.3. No formal action will be taken against a trade union representative until, having consulted with the employee, the circumstances of the case have been notified to a regional officer of the trade union concerned.

5.4. If the employee or their representative requires support (e.g. because of issues to do with language or disability) to take part in this procedure, these matters will be reasonably addressed so that any formal proceedings can take place fairly.

5.5. Information relating to formal proceedings will be kept confidential as appropriate.

5.6. Notes will be taken of formal meetings and a copy will be sent to the employee, normally within five school days. If the employee agrees, and provides contact details, the notes will also be sent to the trade union representative.

5.7. The timescales within this procedure may be amended by mutual consent. Whilst accommodation should be made to ensure proper representation at formal meetings, all efforts should be made to ensure that there are no unreasonable delays in arranging these meetings.

5.8. Where there is alleged incapability on the part of a head teacher, in a community or voluntary controlled school, the chair of the governors will inform the Corporate Director for Communities before any action is taken. In the case of the head teacher, any investigation and further action will be jointly led by the chair of the governing board and the Head of Education Services (or another person external to the school agreed by the chair of the governors and the Head of Education Services).

5.9. In foundation and voluntary aided schools the local authority does not have any statutory entitlement to advise the governing board in relation to the appointment and dismissal of teachers (including head teachers and deputy head teachers). However, it may do so where, and to the extent that, an agreement between the governing board and the local authority provides for it to do so.

5.10. In Church schools, the Diocesan director should also be informed of any proposed action against the head teacher.

6. Authority to act under this procedure

Capability due to ill-health procedure in respect of
Formal meeting/review meeting
Appeal against formal warning
Dismissal
Dismissal appeal
Head teacher
The chair of the governing board and the Head of Education Services
A Governor not previously involved in the case (larger schools may have a panel of up to three Governors)
Panel of three Governors not previously involved in the case
Support employee
Teacher
The employee's line manager
Senior manager, Head Teacher or a Governor
Head teacher (or where the head teacher has been involved in hearing an appeal, and has delegated powers to take a dismissal decision) or a panel of three Governors not previously involved in the case.
A further panel of three Governors not previously involved in the case.

7. Standards of performance

7.1. Managers should explain the standards of performance required to employees as part of their induction, through day to day management, and appraisal process. Employees should be encouraged to raise any concerns or queries that they have about their duties and standards required with their manager. For further information see the model appraisal procedure for schools.

8. The Equality Act and lack of capability

8.1. The Equality Act places responsibilities upon employers where the employee has a disability as defined by the Act. Section 6(1) of the Act defines someone as disabled if they have a physical or mental impairment and the impairment has a substantial and long term adverse effect upon their ability to carry out normal day to day activities.

8.2. In this context substantial means more than minor or trivial, and long term means that it has lasted or is expected to last for 12 months or more. Terminal illness is classed as long term, even if the person is not expected to live for 12 months.

8.3. Some conditions, such as cancer, HIV and multiple sclerosis are defined as disabilities from the point of diagnosis, even when there is no adverse effect upon ability to carry out day to day activities.

8.4. Under the Equality Act employers have a duty to make reasonable adjustments to enabled disabled employees to perform their role. Where an employee is under performing due to a disability the manager should explore whether there are reasonable adjustments that can be made to support the employee in reaching and maintaining a satisfactory standard of performance. This may include:

- Making adjustments to the workplace
- Allocating some of the disabled employee's duties to someone else
- Altering the employee's working hours
- Additional supervision
- Allowing the employee time off for rehabilitation, assessment and/or treatment
- Additional training or mentoring
- Modifying instructions or reference manuals
- Modifying methods or content of work
- Acquiring or modifying equipment
- Adjusting trigger points for formal action under the formal procedure for managing sickness absence
- Redeploying the employee into a suitable existing vacancy

8.5. When managing a case of underperformance due to ill health managers should discuss making reasonable adjustments with the employee both at the informal and formal stages. Managers should seek advice from the school's HR provider. It may also be appropriate to seek advice from occupational health (via HR) or other specialists.

8.6. Managers should ensure that letters to the employee confirming the outcome of formal meetings contain all relevant points, including details of reasonable adjustments

implemented and those considered but rejected, and the reasons for rejecting them. Further advice can be sought from the school's HR provider.

9. Informal action

9.1. All employees (with specific exceptions set out in the appraisal procedure) should have their performance managed routinely under the school's appraisal policy and procedure. Where the appraiser/line manager has concerns about the performance of an employee they should initially manage these informally within the appraisal process and/or normal day to day management processes. At first the manager may not be aware that the employee has a health problem or disability.

9.2. If the manager has a genuine belief that the employee's underperformance is due to a health problem or disability, but the employee does not mention this, the manager should raise this with the employee. Managers should take care to ensure they do this tactfully and supportively.

9.3. Where the employee agrees that their performance may be affected by ill health or disability, it may be appropriate to refer them to occupational health to seek advice about ways of supporting the employee in returning to a satisfactory standard of performance. The manager should discuss this with the employee and contact HR to arrange for the employee to be referred. The manager may decide to adjourn the meeting whilst this advice is sought, or decide to make interim decisions and review these once the report from occupational health is received.

9.4. The manager should consider whether there is any support or reasonable adjustments (see section 8.4) that can be made that will support the employee in returning to and maintaining a satisfactory standard of performance. The manager should agree with the employee what other employees will be told about any adjustments and/or support given.

9.5. The manager should clearly explain the standards that are required and agree an action plan for achieving these, and state when progress will be reviewed.

9.6. The manager should record the key points of informal meetings.

9.7. If informal support within the appraisal process does not produce the required improvements to performance within a reasonable timescale, the appraiser/line manager will decide whether to recommend that the matter should be dealt with formally under the ill health capability procedure.

9.8. The appraiser/line manager will seek advice from the head teacher who will decide whether to move to the ill health capability procedure. In the case of the head teacher, the chair of the appraisal panel will seek advice from the chair of governors, who will consult with the Head of Education Services or their representative before deciding to move onto the ill health capability procedure.

10. Taking formal action using this procedure

10.1. If the manager believes that formal action is appropriate they should contact the school's HR provider for advice.

10.2. The employee will be notified in writing that the underperformance due to ill health /disability will be managed formally under this procedure. The notification will include an invitation to attend a formal ill health capability meeting. At least ten school working days' notice will be given of the date of the meeting, unless a shorter period is mutually agreed.

10.3. The notification will contain sufficient information of the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal meeting.

11. Formal stage one meeting

11.1. The employee's line manager will normally hold the meeting. The intention of the meeting is to establish the facts and seek ways to support the employee in achieving a satisfactory standard of performance.

11.2. The line manager will explain the concerns about the employee's performance, summarize the reasons for believing that the employee's performance is being affected by ill health or disability; including advice received from Occupational Health or other medical sources, and summarize what has taken place informally to support the employee in achieving a satisfactory standard of performance, including any adjustments that have been made.

11.3. The employee will be asked to comment on this.

11.4. The line manager will consider the evidence presented and, after a brief adjournment to consider their decision, may decide either:

a) That there are insufficient grounds to pursue the matter formally and that the matter should either be dropped or dealt with informally. In these circumstances the meeting will end and the formal procedure will cease; or

b) To adjourn the meeting to seek further advice from occupational health, including seeking advice on whether there are further reasonable adjustments that can be made or support given to assist the employee to achieve the required standards.

c) To issue a written warning that the employee's continued employment may be at risk if they do not meet and maintain the required standard of performance.

11.5. In very exceptional circumstances the decision may be to issue a final written warning and invite the employee to a decision meeting. Advice must be sought from the school's HR adviser if such action is being contemplated.

12. Issue of a written warning

12.1. Where a written warning will be issued, the meeting will continue and the manager will

a) Clearly specify the improvements in performance that are required to ensure that the employee can be removed from the formal procedure.

b) Explore with the employee what further support and/or reasonable adjustments can be made to help the employee achieve this (see section eight above). It may be

necessary to seek further advice following the meeting to explore these further and then amend the plan as appropriate.

c) Set out the timetable for improvement and explain support and reasonable adjustments will be put in place, and how performance will be monitored and reviewed. This will depend on the circumstances of the case, but will not normally be less than 6 school weeks or more than 10 school weeks. The period should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place, and

d) Warn the employee that failure to improve within the monitoring and review period could ultimately lead to dismissal.

13. Confirming the outcome of the meeting

13.1. The outcome of the meeting will be confirmed to the employee in writing, normally within five school working days of the decision.

13.2. Where a warning is issued the letter confirming the outcome of the meeting will include details of

a) The areas and nature of the underperformance identified; and

b) The standard of performance to be achieved during the monitoring and review period and any success criteria; and

c) The support that will be available and any reasonable adjustments that will be made

d) How progress towards achieving the standards required will be monitored and assessed

e) The timescale for improvement

f) The procedure and time limits for appealing against the warning

14. The monitoring and review period

14.1. The period of formal monitoring, evaluation, guidance and support should start as soon as reasonably possible after the formal meeting.

14.2. During this period the line manager will ensure that the agreed support is provided and reasonable adjustments implemented. They will monitor performance against the target improvements to be made.

14.3. A formal review meeting will be convened at the end of the period of support to consider the outcome. The employee will be notified in writing at least ten school days before of the date and time of the meeting unless a shorter period is mutually agreed (this date may be agreed at the formal meeting)

15. Formal review meeting

15.1. The line manager (or chair of governors in the case of the head teacher) will chair the meeting.

15.2. The line manager (or chair of governors) will consider the evidence gathered during the monitoring and review period, any evidence presented and representations from the employee, before reaching a decision. The line manager (chair of governors) may, after a short adjournment to consider the information discussed at the meeting, decide that;

a) The employee has made sufficient improvement. In this case the procedure will cease.
b) Some progress is made and there is confidence that more is likely. In this case the monitoring and review period may be extended for a period of up to 6 school weeks. Consideration will be given as to whether there is any additional support/further reasonable adjustments that could assist the employee to reach the required standard.
c) No or insufficient progress has been made during the monitoring and review period. In this case redeployment should be sought. See section 15 below. The employee should be given a final written warning that if they do not meet and maintain the required standards of performance and no suitable alternative employment is found a dismissal hearing/decision meeting will be convened and their employment may be terminated on grounds of capability. The employee is expected to continue to try to meet the required standards of performance whilst redeployment is being sought. Consideration will be given as to whether there are any additional support measures/further reasonable adjustments that could assist the employee to reach the required standard.

16. Confirming the outcome of the review meeting

16.1. The outcome of the review meeting should be confirmed to the employee in writing, normally within five school days of the decision.

16.2. Where a final written warning is issued, the outcome letter will state that failure to achieve and maintain an acceptable standard of performance or find suitable redeployment within the period specified period may result in dismissal.

16.3. The letter should specify the standards that need to be achieved and maintained and give details of any reasonable adjustments and/or support that will be put in place, confirm the details of the redeployment search and specify the duration of the redeployment search period and the time limits for appealing against the final warning.

17. Redeployment

17.1. Where under performance is due to a disability or ill health and making reasonable adjustments has/will not enable the employee to reach and maintain a satisfactory standard of performance the employee will be considered for redeployment. Redeployment can be considered at any stage of this procedure as appropriate to the case.

17.2. Managers should also follow the advice contained in the redeployment section 21 of the school's procedure for managing sickness absence, and section 14 of redeployment in the school's model redundancy procedure.

17.3. The manager should discuss the employee's skills and experience with them, and the types of work that may be suitable. They should consider what the employee does well and any experience that they have gained both inside and outside of work. They

should consider the circumstances of the case and the types of roles that could enable the employee to maintain a satisfactory standard of performance.

17.4. The manager should specify the period of time during which redeployment will be sought. This will normally be between eight school weeks and three school months. This will depend upon the nature of the case, and the likelihood of redeployment being found.

17.5. The manager should explain to the employee that whilst there is no requirement to create a special role for them, they will be entitled to prior consideration for any vacancies that arise within the school.

17.6. The recruiting manager will assess the employee's skills, knowledge and experience in relation to the requirements of the vacancy. Where the employee has a condition that is defined as a disability under the Equality Act, the recruiting manager must consider whether there are any reasonable adjustments or training that would enable the employee to fulfil the requirements of the role.

17.7. If the school identifies a vacancy in another school which might offer a redeployment opportunity, they can approach the school and request that the individual be considered for the post. The school with the vacancy may choose to give prior consideration to the redeployee, but is under no obligation to do so if it prefers to follow normal recruitment processes to fill the vacancy.

17.8. The employee and the recruiting manager may decide upon a trial period or a period of shadowing to help assess the suitability of the role. The recruiting manager should contact the school's HR provider where this is being considered.

17.9. The line manager may be approached by the recruiting manager for a reference. The line manager should bear in mind that information relating to ill health is classified as 'sensitive' under the Data Protection Act so they should obtain the employee's permission before disclosing information to the recruiting manager. The manager should ensure that information provided is factual and may wish to discuss the reference with the employee to explain why they are or are not supporting their application. Further advice can be sought from the school's HR provider.

17.10. If the employee is asked to meet a recruiting manager within the school they should be allowed paid time off work to attend.

17.11. Where the employee is not successful in finding redeployment the manager should arrange a decision meeting.

17.12. Where the employee has applied for a vacancy within the specified time period, but a decision about their suitability has not been made, the decision meeting should not be held until the decision has been made.

17.13. Where successful redeployment is found within the period set out for seeking an alternative role the formal procedure will end.

18. Decision meeting

18.1. At least ten school days' notice will be given of the date of the decision meeting (unless a shorter period is agreed).

18.2. The head teacher will chair the meeting if they have delegated responsibility to make dismissal decisions, and if they have not chaired the formal meeting(s) or review meeting(s). In other cases (including where the dismissal of the head teacher is under consideration), the meeting will be held by a panel of three governors.

18.3. The management case will be presented by the manager conducting the earlier stages of the process, or the head teacher or chair of the governors, as appropriate.

18.4. The head teacher/ governor panel will consider the facts of the case to date, any evidence presented and other representations from the employee. They may decide that;

a. An acceptable standard of performance has been achieved. In this case the formal procedure will end.

b. That performance remains unsatisfactory, and there is no further reasonable support or adjustments that would facilitate this, and that suitable redeployment has not been found. In this case a decision, or recommendation to the governing board, will be made that the employee should be dismissed or required to cease working at the school.

1. Before the decision to dismiss is made the school will consult with the local authority (and the Diocese in the case of church schools).

18.5. The employee will be informed as soon as possible of the reasons for the decision to dismiss, or to recommend dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

18.6. Once the decision to dismiss has been taken, the governing board will issue notice of dismissal (for foundation and voluntary aided schools) or notify the local authority of its decision (for community and voluntary controlled schools). The local authority must issue notice of dismissal within 14 days of notification from the governing board of the decision.

18.7. The period of notice will be the statutory minimum or contractual notice (for teachers, this will be notice in accordance with the Burgundy Book), whichever is the longer.

19. Appeals

19.1. An employee may appeal against a decision to dismiss, or to issue a formal warning under this procedure. The appeal should be made in writing, addressed to the head teacher, or if the head teacher has issued the warning, or the employee is the head teacher, or the appeal is against dismissal, to the clerk of the governing board, within

five days of the written notification of the decision, setting out the grounds for the appeal.

19.2. An appeal meeting will be convened as soon as possible and the employee will be given at least ten school days' notice of the time and date, unless a shorter period is mutually agreed.

19.3. Appeals will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

19.4. The employee will be informed in writing of the result of the appeal hearing as soon as possible.

1 For VC and Community schools, the governing body must recommend that the Local Authority dismiss the employee. For VA and Foundation schools, the governing board has the power to dismiss.

20. Dealing with grievances

20.1. Where a member of staff raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance.

20.2. Where the grievance is related to the capability due to ill health or disability case, it will be appropriate to deal with it under the terms of this capability due to ill health procedure, either during formal meetings or as part of an appeal.

21. Sickness absence

21.1. Short term sickness absence will not normally interfere with monitoring or other formal procedures.

21.2. If long term sickness absence appears to be triggered by the start of monitoring or a formal capability due to ill health procedure, this will be handled under the school's procedure for managing sickness absence.

22. Temporary suspension due to suspected ill-health

22.1. In some instances the manager may have a reasonable belief that the employee is attending work when they are not fit to do so and may be putting their own or others' health and safety at risk.

22.2. Where this is the case the manager should privately explain their concerns to the employee and ask them whether they are fit enough to be at work. The employee should be allowed to respond to this.

22.3. Where the employee agrees that they should not be at work they should be sent home and recorded as being on sick leave until they are fit to return. The manager should ensure that the employee is safe to return home.

22.4. Where the employee does not accept that they are not fit to attend work the manager should send them home on full pay. The employee should be advised to visit their GP or, alternatively the manager may ask for the employee to be referred to occupational health. In these circumstances the manager may require the employee to remain at home until the report has been received. Further advice should be sought from the school's HR provider.

23. Appendix one ill-health capability flowchart

