



**SOLENT SPECIAL EDUCATION TRUST (SSET)  
“THE TRUST”**

**Title:** Capability For Support Staff Policy and Procedure

**Lead Reviewer:** Human Resources and Administration Manager

**Who this is aimed at:** All Staff

<b>Version</b>	<b>Reason for Change</b>
V1	New policy

<b>Date Initially Implemented</b>	Autumn 2022
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## **Policy Statement**

The Capability Policy and Procedure is used where a Headteacher or senior manager has concerns that an employee is failing to work to the required standards expected. The procedure has been designed to help and encourage employees to achieve and maintain a satisfactory level of performance where this is found to be lacking.

The Procedure provides an effective mechanism for investigating and dealing with problems which appear to be caused by capability of an employee to perform work of a satisfactory standard and may lead to dismissal if performance does not improve to a satisfactory level.

This Policy recognises that capability refers to the skill, knowledge and aptitude of an employee that can clearly be distinguished from their conduct or misconduct. However, where a distinction between conduct and capability cannot be easily made, the matter should be considered as a conduct issue as oppose to a capability issue and dealt with under the Disciplinary Policy and Procedure as a disciplinary matter. If after having proceeded under that process as a conduct issue, it becomes apparent it was in fact a capability issue, (or as well), this policy would then also apply.

This Policy does not form part of any employee's contract of employment and it may be amended at any time.

## **Application**

This Policy applies to all employees within the Trust (with the exception of school teachers, casual workers and new employees under their probationary period).

## **Responsibility**

The Headteacher will treat any case dealt with under the Capability Procedure as confidential. However, the Governing Body may be informed the procedure has begun without discussing the details of the case.

The Headteacher may delegate the implementation of the Capability Procedure to a senior manager such as the Deputy Headteacher.

## **Capability for Support Staff Procedure**

### **Informal Stage**

There is no requirement for an informal stage, however this is encouraged and may be considered where appropriate.

- A brief note of any counselling/informal support should be maintained for reference. Any note should be signed and dated by the employee as well as the Headteacher/senior manager to ensure the record/note provides an accurate account of what is discussed.
- Where an employee is considered to be under-performing, either arising from a performance appraisal process or otherwise, the Headteacher, senior manager or other nominated officer may exercise their discretion to address the matter informally, rather than starting a formal process.
- The areas of concern will be highlighted to the employee and the appropriate action, for example relevant assistance, support or training, will be discussed and agreed.
- The employee will be informed as soon as possible of the decision to either end the informal monitoring or to start the formal procedures.

The employee will be kept up-to-date throughout the informal process, at least every two weeks. An informal process of monitoring will not normally extend beyond a period of six weeks, unless there are exceptional circumstances.

### **Stage One - Formal Capability Meeting**

The formal meeting initiates the Formal Capability Procedure. It provides an opportunity to deal with capability concerns in a structured way. It allows the employee to prepare a verbal and/or written response to allegations about performance and make a case in the company of a trade union representative or colleague, if they so wish. The representative can speak and present the case on behalf of the employee, if the employee so wishes. However, factual questions should be answered personally by the employee.

The formal capability meeting will be conducted by the Headteacher or senior manager.

At least five working days' advance notice will be given for the meeting, which should take place within directed time. The written advance notice of the meeting should set out the following:

- That the formal process is being initiated.
- Specific details of the concerns regarding performance and the associated evidence which has given rise to those concerns, and which will be presented to the employee during the meeting. This should include details of any witnesses who will be providing, normally written, evidence.
- Details of who will be involved at each stage of the process.
- The range of possible outcomes resulting from such a process.
- The employee's right to be accompanied by a union representative or colleague.
- The employee's right to seek and present their own evidence, including, normally written, evidence from witnesses.
- The date, time and location of the meeting, and the deadline by which the employee must respond, confirming both attendance at the meeting and details of the union representative or colleague who will accompany them.

During the meeting the above points should be explained in detail, making clear how the employee's performance is considered to be below the standards expected. The meeting will provide a fair opportunity for the employee and their representative to answer the concerns and to present their evidence.

The meeting may provide new information or put a different slant on evidence collected. If it becomes apparent that further investigation is needed, the meeting will be adjourned for an appropriate and suitable length of time in order for this to happen. This is less likely in cases where an informal process has been used from the outset.

No decision regarding the next step should be made during the meeting. However, the options following the formal meeting are:

- Where new information provides a different slant/version on the information collected, or further investigation suggests that the matter is not as serious regarding capability as it first appeared, a decision may be made to take the matter no further because there is insufficient evidence to pursue the matter on the grounds of capability, and it is more appropriate to continue addressing the issues through the appraisal process.
- Continue with the formal process and apply the appropriate level of disciplinary sanction, if the concerns regarding the standard of performance are upheld/confirmed, for example a written warning or, for the most serious of cases, a final written warning.

A decision should be made only after all the facts and any representations from the employee or their representative have been fully considered.

Where a decision is made to take the matter no further, this decision will be confirmed to the employee in writing as soon as possible, without delay.

In cases where the performance concerns are upheld, a decision will be reached as to the appropriate level of disciplinary sanction.

Notes will be taken of the formal meeting and a copy sent to the employee. Notes should be signed and dated by the employee to confirm they are an accurate record of what has been discussed. Any notes are confidential and should not be disclosed to any other party without the employee's consent.

This decision will be communicated to the employee in writing as soon as possible. The letter to the employee should include the following:

- Details of how the employee's performance has fallen short of expectations and fell below the standard expected of the employee.

- The appropriate level of disciplinary action, i.e. written warning or final written warning.
- Clear guidance regarding the expected standard of performance required and the likely timescale for improvement that is required in order to conclude/complete the capability procedure.
- Where appropriate, the setting of new objectives that focus on the specific issues that need to be addressed, clear targets and the evidence that will be required in order to assess whether or not the necessary improvement has been made.
- An explanation of the support that will be made available, including any appropriate training or mentoring, to assist the employee in improving their performance.
- The timetable for improvement and an explanation of how performance will be monitored and reviewed over the following weeks. The timetable will depend on the circumstances of each individual case. Any time period set should be reasonable and proportionate, but not excessively long, and it should provide a sufficient opportunity for an improvement in performance to take place.
- Details of a date for the next meeting.
- The employee should be warned of the likely outcome in the event they fail to improve and bring their performance up to the required standard expected within the set period.
- The employee's right to appeal the decision to the Governing Board, and the appropriate process.

### **Monitoring and Review**

A performance monitoring and review period will follow the Formal Capability Meeting, unless it is agreed that no further performance management is required. Formal monitoring, evaluation, guidance and support will continue during this period. A record of any meeting arranged during the period of monitoring should be kept in writing, including specific details of what was discussed and agreed, which should be signed and dated by the employee.

The length of the review period will depend upon the type of concern. However, it should not normally exceed six weeks, unless agreed otherwise by both parties.

## **Stage Two - Formal Review Meeting**

At the end of the review period, the employee will be invited to a formal review meeting, unless they were issued with a final written warning, in which case the employee will be invited to a decision meeting (see below). The purpose of the formal review meeting is to assess performance over the previous agreed review period. At least five working days' advance notice will be given for the meeting, and a trade union representative or work colleague may accompany/represent the employee. No decision will be reached during the meeting, because the Headteacher will need to consider the evidence presented in detail in due course.

If the level of performance has been at the acceptable required standard and there is confidence that this level can be sustained, the Capability Procedure will end and this will be confirmed by letter from the Headteacher/Senior Manager.

In other cases, the following options apply:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
- If insufficient improvement in performance has been made during the monitoring and review period, where the employee has been subject to a written warning, they will receive a final written warning.

In either case, formal monitoring, evaluation, guidance and support will continue for a further extended period. The detail of this will be explained at the meeting and the time limits set. However, it should not normally exceed six weeks, unless agreed otherwise by both parties.

The employee will be informed that failure to achieve an acceptable performance standard, with confidence that it can be maintained, may result in dismissal. The employee will be invited to a decision meeting. Notes will be taken of the formal meeting and a copy sent

to the employee. The employee may appeal against any decision by informing the Headteacher, in writing, of such appeal and they will be invited to a decision meeting.

Any appeal against a final written warning must be made within five working days of receipt of the outcome of the formal review meeting and should be heard within ten working days of notification of appeal (unless it is not reasonably practicable), and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

### **Decision Meeting – Stage 3**

Where there has been a final written warning, a formal decision hearing will be held in order to carry out a final evaluation. A full assessment of performance over the previous weeks will take place during this hearing. At least five working days' advance notice will be given for the time and place of the hearing. A trade union representative or work colleague may accompany/represent the employee.

If during the hearing, the Headteacher feels there is sufficient additional evidence that there has been an acceptable level of improvement towards the required standard of performance, they may choose to provide a further opportunity for the employee to achieve the required standard. A strict time limit is imposed in such cases and this should be for no longer than six weeks. If an acceptable standard of performance has been achieved during the further monitoring and review period, the Capability Procedure will end. This decision will be confirmed to the employee in writing and during this period the review and monitoring procedures will apply (see above).

If performance remains at an unsatisfactory standard, a recommendation will be made to the Governing Board that the employee should be dismissed. A meeting of the Staff Dismissal Committee will be convened and details of the decision regarding the evaluation of performance, a copy of the notes of the formal decision meeting and the date and time of the Staff Dismissal Committee hearing should be recorded in a letter to the employee and sent to the employee as soon as is reasonably practicable.



The employee will be notified in writing of their right to appeal the decision.

## **Dismissal**

Any decision to dismiss must be in accordance with the arrangements adopted by the Trust (TUPE regulations may apply).

The Staff Dismissal Committee shall comprise three Governors of the Governing Board.

This Committee will hear the representations and recommendations brought by the Headteacher/Senior Manager conducting the capability evaluation, and any representations (verbal and/or written) that the employee or their representative may wish to make.

It shall determine whether or not to uphold the recommendation.

Where the Staff Dismissal Committee determines the case against the employee to be proven, they shall dismiss the employee from the Trust's employment, normally giving contractual notice.

Should the Staff Dismissal Committee determine that, on the balance of probabilities, i.e. that it is more likely than not that the case against the employee has not been proven, they shall determine either:

- To end the Capability Procedure because an acceptable standard of performance has been achieved, or
- To revert to an earlier stage in the Capability Procedure.

A letter will be sent to the employee informing them of the decision and the associated reasons.

The employee may appeal against the decision by informing the Clerk to Governors of such appeal.

Any appeal against dismissal must be made within five working days and heard within ten working days of notification of appeal (unless it is not reasonably practicable), and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

The Dismissal Appeal Committee (usually three governors) of the Governing Board will hear any appeal, at this stage of the procedure. It will hear both the reasons for the appeal and the reasons for the Staff Dismissal Committee's decision before determining whether or not to uphold the appeal.

None of the governors on the Staff Dismissal Committee will be on the Dismissal Appeal Committee.

### **The Right to Appeal**

Should the employee wish to exercise their right to appeal a decision at any stage, this should be made by informing the Headteacher in writing. The employee should set out the specific grounds for appeal and the evidence to support the appeal. An appeal should be made as soon as possible, and in any event, within five working days of receipt of the decision regarding the outcome of the formal meeting. The Headteacher will then convene a meeting of the Appeals Panel of the Governing Board.

A member of the Appeals Panel will write to the employee confirming the date, time and location for the hearing, giving reasonable notice, and informing the employee of their right to be accompanied by a trade union representative or colleague. Except where it is not reasonably practicable, the appeal will be heard within ten working days of notification of appeal.

The appeals hearing will provide the employee with a fair opportunity to present their case fully and any supporting evidence they wish to rely on.

No decision will be made during the appeals hearing, because the panel will adjourn the hearing in order to consider all the evidence available and any representations that have been made by the employee and/or their representative during the hearing. The Appeal Panel will then decide whether or not the sanction applied is to be upheld and this decision will be confirmed to the employee in writing without delay, setting out the reasons for the panel's decision. The decision of the Appeals Panel of the Governing Board is final.

### **Related Documents**

This document should be read in conjunction with other Trust Policies, including those relating to Disciplinary Policy and Procedure, Grievance Policy, Probationary Period Review Policy and Absence Management Policy.

### **Complaints**

Any employee is entitled to make a complaint in respect of any breach of this Policy through the Trust's Grievance Policy and Procedure.