

G329 Support staff capability - guidance for schools

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1. Introduction

- 1.1 This guidance helps schools to deal with problems of support staff capability (poor performance). It links to P329 *Support staff capability – model procedure for schools*. The guidance and procedure together provide a fair and efficient process which is in line with good employment practice.
- 1.2 Teacher capability is covered separately under P329b (*Teacher capability – model procedure for schools*) and G329a (*Teacher capability – guidance for schools*).
- 1.3 It is important to distinguish between conduct and capability:
- **Conduct** is about behaviour which is often, but not always, deliberate but is at least within the employee’s control. Concerns around conduct should be dealt with under P303 *Employee discipline: model procedure for schools* and accompanying guidance.
 - Problems with **capability** will relate to cases where an employee is unable to achieve the level of competence expected because of lack of knowledge/skills and abilities. These **capability** issues should be dealt with through this guidance and the model procedure, P329...

In some cases, an employee’s ability to carry out their role effectively may be impaired by other factors such as health, working relations or private

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circumstances. The model procedure allows for such circumstances to be taken into account. When an employee's ability to carry out the requirements of their post is in question because of an identified underlying medical condition, the relevant parts of the *Improving Attendance and Ill-health management Policy* (P313) and *Procedure* (P313a) should be followed.

- 1.3 Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance reviews will help avoid the need for formal capability procedures. In some cases an improvement may be achieved informally with a minimum of support and attention. In others a more formal approach will be necessary.
- 1.4 Governing bodies must by law have procedures for dealing with lack of capability in employees. The model procedure for addressing concerns over support staff capability (P329) is consistent with the ACAS Code of Practice on disciplinary (and capability) matters.

2. Responsibilities

- 2.1 P329 *Support staff capability - model procedure for schools* and this guidance should be considered in conjunction with current legislation, particularly the School Staffing Regulations 2009.
- 2.2 A governing body committee set up as part of the governing body's normal processes, the Chair of Governors, a nominated individual governor and the Headteacher, can each have delegated authority for different aspects of the process. It is advised that responsibilities are distributed as follows:

	Procedure against employee
Support and monitoring	Headteacher
First or final warning	Headteacher
Appeals against warnings	Appeal Committee
Dismissal	Staff Dismissal Committee*
Appeals against dismissal	Dismissal Appeal Committee

* Under The School Staffing (England) Regulations 2009, the Governing Body may delegate responsibility for dismissal of employees to the Headteacher, one or more

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governors, or one or more governors acting together with the Headteacher. Although the authority to dismiss can be delegated to the Headteacher, they are primarily responsible for taking employees through the process until a decision on dismissal has to be made. It would therefore not be appropriate for the Headteacher to also make the decision regarding dismissal in capability cases. Schools are advised against delegating dismissal decisions to individual governors.

- 2.3 The Governing Body should determine and formally record where responsibility will lie. They may do this annually or on a case by case basis.
- 2.4 The Director of Children's Services (or their representative) has the right to attend meetings at which a dismissal decision may result (including appeals against dismissal).
- 2.5 Norfolk County Council expects Community schools to adopt P329 *Employee capability: model procedure for schools*. Voluntary Controlled and Voluntary Aided Schools may seek the advice of the appropriate Church Authority at any stage. Voluntary Aided schools have the right to adopt lack of capability procedures as advised by the appropriate Church Authority. Foundation schools are advised to adopt the model procedure.

3. The role of governors

- 3.1 Governors should not normally be involved with the capability procedure before the dismissal stage. The exceptions to this are where a governor or governors are involved in considering an appeal against a warning.
- 3.2 It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal committee and no fewer for the appeal. Normally a panel would consist of three governors but where this number is not reasonably practicable it can be reduced to two.

4. The role of advisers

- 4.1 Advice may be taken by the school from Local Authority advisers or other advisers with specialist experience. This advice may relate to the process itself or to the provision of support and/or monitoring. An example of this could be where advice is taken from Children's Services Schools Finance where concerns about performance involve the financial aspects of an employee's work.
- 4.2 An HR (Employee Relations) Consultant would normally support the Headteacher through the capability procedure. If concerns have not been resolved through low level action (i.e. outside the scope of the procedure), advice should be sought early on to ensure the informal "counselling" stage and then formal stage are conducted appropriately.

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5. Representation at formal interview, evaluation meetings and the dismissal hearing

- 5.1 An employee has a statutory right to be accompanied by a representative (i.e. a union representative or work colleague) at formal meetings. If the employee's chosen representative is not available at the time proposed for the interview, meeting or hearing, and the employee proposes an alternative date that is reasonable and falls within five working days of the proposed day, the school should rearrange the event to the time proposed by the employee. This would of course be conditional upon the availability of the Headteacher and other individuals who need to be present (e.g. HR Consultant). Where the identity of the representative is known, consultation over suitable dates can prove helpful to avoiding delays.

6. Notice

- 6.1 Notice of five working days (or seven consecutive days out of term time) must be given for the formal capability interview. The date of successive evaluation meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged. Notice of at least five working days (or seven consecutive days out of term time) must be given for a staff dismissal committee or dismissal appeal hearing.

7. Support for the employee

- 7.1 Those monitoring performance should offer feedback and instruction to help the employee improve. If training courses or assistance from colleagues would be helpful, these should be arranged as soon as possible but should not interrupt the timing of the procedure. Clearly, if support is identified as being necessary to bring about improvement, it needs to be provided early on in the process so that sufficient time is allowed to realise the benefits of that intervention.
- 7.2 Examples of help to meet targets in the informal (counselling) and formal stages include:
- pastoral support from an appropriate employee
 - counselling by senior colleague or Norfolk Support Line
 - job coaching;
 - observations of good practice elsewhere
 - observation and advice by other colleagues or advisers
 - issue of notes or examples of work for guidance
 - relevant INSET
 - attachment of a mentor within the school.
- 7.3 Evidence of all support must be collated so notes of observations and meetings can inform the next review meeting.

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8. Monitoring arrangements

- 8.1 Monitoring should cover a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.
- 8.2 Examples of the ways progress can be monitored include:
- observation of work by Headteacher or other nominated employee
 - reviewing work samples
 - regular meetings to review documentation

9. Written records

- 9.1 A written record should be made of all interviews with the employee and any action taken following such an interview. Formal warnings should be disregarded (ie no longer remain “live”) when the employee has demonstrated satisfactory performance for the specified period. These periods are one year for an oral or written warning and two years for a final written warning.

10. Employees who are absent through illness during the procedure

- 10.1 Urgent action should be taken if long-term absence intervenes during a capability procedure. If long-term absence appears to be linked to the action being taken by the school to address the employee’s poor performance, the case should be referred immediately to occupational health (via HR Direct or Employee Relations) to assess the employee’s health and fitness for continued employment. The school must take a considerate and sympathetic approach but, in general, the length of time they may wait for the employee’s health to improve before considering whether to terminate employment on health grounds should take into account occupational health guidance and HR advice.
- 10.2 Steps should be taken to enable the employee to attend evaluation meetings, but where the employee is unable to attend, these may proceed in the employee’s absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances, the employee should be invited to make a written submission and a full account of the evaluation should be provided in the letter confirming the decision taken.
- 10.3 Short absences should not delay any part of the formal stage of the capability procedure.

11. Decisions on continuing the procedure and recommending dismissal

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- 11.1 Normally the decision to continue a capability procedure or recommend dismissal should be taken by the Headteacher but advice should be taken from Employee Relations on this and the views of appropriate others involved in the process (eg the employee's line manager) should be considered.
- 11.2 Dismissal and any appeal hearings must be arranged in accordance with current legislation and statutory guidance. The current legislative requirements are covered by the model procedure and these guidance notes.

12. Timetable

- 12.1 References to school terms throughout this guidance and the model procedure are taken to mean normal school term lengths for schools that operate a three term academic year. Should any school operate on more than the normal three terms in an academic year, an approximate pro rata adjustment to any references to school terms should be made.

13. Confidentiality

- 13.1 The general principle is that lack of capability procedures are confidential and all parties involved should respect this. However, on rare occasions, a formal meeting or a potential dismissal situation can lead to media enquiries. Where this is the case, Headteachers or governors should seek advice from HR Employee Relations and the County Council's Media and Communications team.

14. Disputes about the procedure

- 14.1 Any disagreements about the interpretation of the model procedure, or the application of any related matters not covered in it, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

15. Appeals against formal warnings

- 15.1 Appeals must be heard by a panel of governors. Involvement in hearing appeals against warnings does not necessarily mean that a governor is tainted and thereby ineligible to serve on a dismissal or dismissal appeal committee.
- 15.2 Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities.
- 15.3 An employee is entitled to be accompanied at an appeal hearing by a representative.
- 15.4 The appeal decision should be confirmed in writing and the employee told there is no further appeal against the decision.

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- 15.5 Where the reasonableness of the decision is being challenged, the question to be answered is whether the decision to apply the particular sanction was, in the view of the Appeal Committee, soundly based. If the Appeal Committee finds that the decision was not soundly based, they have the option of overturning the decision but would need to state how their determination should impact on the capability procedure being followed.
- 15.6 Where an appeal is upheld the matter should be referred back to the Headteacher to be reconsidered or for further appropriate action.
- 15.7 Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

16. Grievances

- 16.1 In exceptional circumstances an employee may raise a grievance about the behaviour of a Headteacher or other manager during the course of a capability procedure.
- 16.2 Depending on the circumstances it may be appropriate to suspend the capability procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another manager to deal with the capability case (e.g. Deputy Headteacher). Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.