



**National  
Autistic  
Society**



**Vanguard  
School**

## **CAPABILITY REPORTING POLICY**

<b>Version</b>	<b>Date</b>	<b>Distribution</b>
2.0	13 <sup>th</sup> May 2019	NASAT Vanguard Project Group
2.1	10 <sup>th</sup> June 2019	NASAT Vanguard Project Group

## 1 Introduction

NAS Vanguard School capability procedure applies to staff about whose performance there are serious concerns around inadequate competence that the performance management process has identified but is not designed to address.

It is recognised that this a capability procedure can be a difficult time for employees and the process must be handled sensitively in a context where allowing poor behavior to continue without addressing it may lead the individual to conclude that it is acceptable and may also lead to colleagues acting similarly. Staff members should know what is expected of them and be in no doubt as to what will happen if they fail to achieve and maintain accepted standards. Nevertheless, line managers should not view this primarily as a way of imposing penalties or as leading to dismissal. The policy needs to be seen as corrective rather than punitive, ensuring that staff adhere to acceptable high standards of professional conduct.

## 2 Misconduct

The standards of conduct expected of staff members are those necessary to maintain mutual trust and confidence. Non-exhaustive examples of misconduct could be;

- failure to adhere to management instruction,
- poor time keeping
- not adhering to the charity's policies or procedures
- unauthorised absence,
- unreasonably negative attitude, disruptive behaviour,
- unacceptable level of personal phone calls,
- a breach of our code of conduct
- a breach of our values

## 3. Gross misconduct

Gross misconduct is any act by a staff member that is seriously detrimental to the good conduct or reputation of the school and/or to the welfare of the young people we support.

An act of gross misconduct will, after an investigation and a fair hearing, generally lead to summary dismissal. Summary dismissal is where an employee's contract is being terminated immediately without being issued with a formal warning and without notice or

pay in lieu of notice. This is a non-exhaustive list of examples of offences which may amount to gross misconduct:

- theft, fraud and the deliberate falsification of records
- willful or negligent damage to, or misuse, or unauthorized use of our property or facilities
- working whilst under the influence of alcohol or non-prescribed drugs
- the use, handling or possession of illegal drugs on or off our premises
- reckless or serious misuse of one of our vehicles
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious negligence which causes or might cause loss, damage or injury
- serious insubordination
- accepting a gift from a person we support or their family, carer or advocate without disclosing this to your line manager
- sleeping on duty
- gross misuse of social media
- discrimination on the grounds of race, sex, disability, sexual orientation, religion or belief or age
- bullying or harassment of colleagues or people we support
- violent, dangerous or intimidatory conduct
- serious breach of confidentiality (subject to the Public Interest (Disclosure) Act 1998)
- serious breach of our rules and procedures
- serious infringement of health and safety rules
- bringing our organization into serious disrepute
- breaches of our legal and policy obligations to avoid conflicts of interest
- conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, customers or the public, or otherwise affects your suitability to continue to work for us
- being concerned or interested in action which is damaging or anti-competitive to our business
- giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits
- bribery, corruption or the improper use of position within our organization for personal gain
- conduct and/or behaviour, including that occurring outside working hours, which brings or may bring us into disrepute or make you unsuitable for your post
- publications on any social media site which are derogatory in content or tone towards our organization or our employees or stakeholders or which have a significant adverse effect on our reputation
- falsification of records (of any kind);
- serious insubordination;
- deliberate damage to property
- unauthorised use or disclosure of confidential information

Performance may fall below expected standards without entering the category of gross misconduct. Where the staff member wants to do the job but for some reason cannot meet the expected standards or cannot cope adequately with any aspects of their employment, the charity must provide support and set reasonable timescales to reach the required performance standards. Capability issues can end up in dismissal if there is no improvement in performance or if there is an unsatisfactory level of improvement within a defined time period.

### **3 Initial response**

Where there are concerns about an employee's performance, the manager should try to resolve this informally through normal day to day supervision. This should be a two-way discussion, aimed at pointing out the shortcomings and encouraging improvement. Criticism should be constructive with the emphasis on finding ways for the teacher to achieve sustained improvement.

Where the required improvement has not been achieved through informal intervention the manager should implement an action plan with a set timescale for improvement. This should be for a minimum period of 4 weeks and a maximum period of 12 weeks. If there is no sustained improvement, this should be addressed using the formal process as outlined below.

The Action Plan approach is designed to facilitate a constructive discussion between an employee and their manager on the area(s) of their work performance that needs to improve. It should:

- Provide details of areas where the employee is not meeting the required standards of performance
- Clearly outline the improvement that is required; the timescale for achieving this improvement; a review date and any support that will be provided to assist the employee
- Ensure that the employee understands the standard of work required
- Outline that a consequence of non-achievement of performance standards will be an initial formal meeting under the capability procedure below

### **4 Notice of initial meeting**

For consideration of the school's response following actions that are not leading to the

required improvement under the action plan but not investigated as gross misconduct, at least five working days' notice will be given of an initial formal capability meeting (see below). The notification will contain sufficient information about the concerns around inadequate performance and the possible consequences, in order to enable the member of staff to prepare to answer the case at a formal capability meeting.

It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a companion who may be a colleague, or a trade union official or other representative.

### **5 Initial formal capability meeting**

This meeting is held to establish the facts as far as possible at the time. It will be led and conducted by the Chair of the Local Governing Body (LGB) for Executive Principal, senior leadership team and teacher capability proceedings, or the Vice Chair if the Chair is unavailable for any reason, and they will be accompanied by two other Governors; these two Governors will not include the Executive Principal. For other members of the staff this will be carried out by the line manager and at least one member of the senior leadership team.

The initial meeting allows the teacher or member of staff, accompanied by a companion if they wish, to respond to concerns about their performance in terms of capability and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected, which information will be taken into account.

The person leading the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the performance management process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In all other cases, the meeting will continue. During the meeting, the person conducting the

meeting will do the following:

- identify the professional shortcomings, for example which of the standards expected of teachers are not being met, and the available evidence for these
- give clear guidance on the improved standard of performance needed to meet agreed targets and ensure that the teacher can be removed from formal capability procedures. This may well include the setting of targets focused on the specific weaknesses that need to be addressed, how relevant evidence will be gathered, and success criteria that would be appropriate. Objective evidence will be used to assess whether or not the necessary improvement has been made and associated targets met, together with how where and when further evidence will be gathered
- explain any support available to help the teacher improve their performance, which may include reduced teaching duties, observation of lessons delivered by senior staff, observation of the teacher's lessons, meetings with middle and senior leaders, and professional development input on-site or off-site
- set out the overall timetable for improvement and explain how performance will be monitored and reviewed in future

The timetable will depend on the circumstances of the individual case but in straightforward cases would be between four weeks and one term. The period chosen will be reasonable and proportionate, not excessively long, and will provide sufficient opportunity for an improvement to take place. The leader of the meeting will also warn the teacher formally that failure to improve within the set period could lead to dismissal.

Notes will be taken, and a copy sent to the member of staff within two working days. They will also be informed about the procedure, and time limits, for appealing against the final decision.

## **6 Monitoring and review period**

A performance monitoring and review period will follow the initial formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period as described in the note of meeting. The member of staff will be invited to a further formal review meeting.

## **7 Further formal review meeting**

Following the period of review set out in the note arising from the initial formal review meeting, at least five working days' notice will be given regarding a further formal review

meeting. The notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or other representative.

If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease, and the performance management process will re-start.

In other cases:

- If some but insufficient progress has been made and there is confidence that more is likely, it will be appropriate to extend the monitoring and review period, reconsider the support available, and set a date for an additional review meeting
- If no improvement or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning

Notes will be taken of the formal meeting and a copy of these sent to the member of staff. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within the newly set timescale may result in dismissal. They will be given information about the handling of the additional monitoring and review period, support available, and the procedure and time limits for appealing against the final warning. The member of staff will in due course be invited to a decision meeting.

## **8 Decision meeting**

As with initial formal capability meetings and further formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting, and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or an approved trade union representative.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the performance management process will re-start.

If performance remains unsatisfactory, a report with a recommendation to the full Governing Body (or the Trust in the case of the Executive Principal) will be compiled, stating with reasons that the teacher should be dismissed.

The staff member will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice, and their right of appeal.

## **9 Dismissal**

Once a decision to dismiss has been taken, the Governing Body will dismiss the member of staff with notice in writing, in keeping with the period specified in the contract of employment.

## **10 Appeal**

If the member of staff feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place notified to the teacher. As detailed below, governors involved in this meeting will not include any governor involved in the initial decision.

The same arrangements for notification and right to be accompanied by a companion will apply as with initial and further formal capability meetings and, as with other formal meetings, notes will be taken, and a copy sent to the teacher as soon as practicable after the meeting.

The appeal will be dealt with impartially, by 3 members of the Local Governing Body who have not previously been involved in the case in any way; these three governors will not include the Executive Principal. The teacher will be informed in writing of the results of the appeal hearing as soon as practicable, in terms of whether their appeal has been upheld or not.

#### **11 Review**

This policy will be reviewed bi-annually by the Governing Body.