

## The STAR Multi Academy Trust

### Capability Policy & Procedure

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## 1. Scope

### 1.1

This policy and procedure applies to staff employed directly by the STAR Multi Academy Trust, except those in the following circumstances:

- support staff within their probationary period
- those on Apprenticeship schemes
- for dealing with issues of misconduct, attendance or resolving issues at work, for which separate policies apply.
- employees in the induction period of Early Career Teachers (ECTs), unless serious capability issues occur

### 1.2

The policy has been adopted by the Trust Board on the date shown on page 1.

### 1.3

If a concern or grievance is raised regarding any aspect of this Policy, it should be dealt with as promptly as possible within this process. Matters should only be referred to be dealt with through the Resolving Issues at Work Procedure where they are not related to the application of this policy for that individual case.

### 1.4

Where reference is made to manager within this policy, this could mean Headteacher/Executive headteacher, line manager, Head of Department/Faculty, Academy Business Manager or governor. The CEO/Headteacher/Executive headteacher will ensure appropriate application of this policy.

## 2. Policy Statement (*please refer to Guidance section 2*)

### 2.1

This procedure is to be used:

- where under performance by an individual member of staff has been addressed through the Developing Performance Procedure and has not resulted in the individual making the necessary improvements in performance.

Or

- in cases of serious under performance, e.g. where the delivery of a service is significantly affected, then this procedure may be used first.

### 2.2

Employees are entitled to be supported by a trade union representative/professional association or work colleague at the Hearing and Appeal stage of this process.

### 2.3

Managers are strongly advised to take advice from the Trust HR provider regards the application of this policy and at all stages of the procedure.

<b>Level of Sanction</b>	<b>Authorised Officer</b>	<b>Appeal to</b>
Dismissal	LGB/Board of Directors Committee 'A'	Board of Directors Committee 'B'

### 3. Decision Making – capability hearing panel

#### 3.1

The capability hearing will take place before a panel of three members of the Governing Body/Board of directors (as determined by the employee's position and level of seniority). The Panel should appoint one member as Panel Chair.

### 4. Right to be Accompanied (*Please refer to Guidance Section 3*)

#### 4.1

The Academy Trust recognises the right of the employee to be accompanied by a trade union representative/professional association or work colleague at all Hearings and Appeals of the Capability Procedure. The accompanying representative has a statutory right to address the Hearing but no statutory right to answer questions on the employee's behalf.

### 5. Procedure (*Please refer to Guidance Section 4*)

#### 5.1 Identification of Performance Problems

Concerns over an individual's job performance may arise through a variety of sources. Some points of reference include: professional codes of conduct and practice including the Professional Standards for Teachers and other relevant occupational standards; Job Descriptions and Person Specifications should also be referenced. Line managers must be clear that there are sufficient concerns regarding an individual's performance, and there is a pattern of underperformance sufficiently serious to warrant dealing with the matter through the Capability Procedure.

Where the manager feels the issues should be addressed through the Capability Procedure then the manager should speak with the employee on a 1:1 confidential basis, asking them to attend an initial meeting to discuss the way forward. The manager will inform the employee of the areas of work performance to be discussed and follow this conversation up in writing. The employee will be given a copy of the Capability Policy and Procedure, emphasising the supportive nature of the process.

*Use model letter 1, Appendix 2 to invite employee to the meeting.*

In preparation for the meeting, the manager will produce a draft Support Plan and give it to the employee for consideration at the Initial Meeting.

Refer to Guidance regarding support mechanisms for improving work performance. (Appendix 1)

Where the Capability process follows on from the Capability Procedure, the Capability Support Plan should relate to issues previously raised.

### 5.2 Initial Meeting and Support Plan *(Please refer to Guidance Section 5)*

The manager should ensure that the employee understands that the intention of the process is to support them in achieving a sustainable satisfactory job performance. The employee should be given an overview of the entire process including all possible outcomes.

The performance concerns will be discussed, clearly identifying the nature of the problem(s) and providing supporting evidence.

After discussing the issues, including the draft Capability Support Plan, a Capability Support Plan will be finalised and confirmed in writing.

*Use model letter 2, Appendix 2 to confirm the outcome of the meeting.*

### 5.3 Timescales *(Please refer to Guidance Section 6)*

The time allowed for the employee to demonstrate a significant improvement depends on the seriousness of the consequences of underperformance. The minimum timescale allowed before a formal review takes place, in exceptional circumstances, where service delivery or safety is seriously compromised, is four weeks.

While the timescale will be determined case by case, as a general guide minimum of 4 weeks and a maximum of three months would be the parameters between the Initial Meeting and the Review Meeting, before a final decision is made. Evidence of a significant improvement will usually be required, within half a term. A significant deterioration in performance may bring forward the date of the review meeting. The timescale may also reflect the amount of time and support an employee has already received.

Suspension from work with pay may be appropriate where the employee's performance is such that remaining at work may put him/her or other people at risk or may seriously detriment service provision. A temporary transfer to another suitable post may be an alternative.

### 5.4 Monitoring and Support *(Please refer to Guidance Section 7)*

Support and monitoring functions should be delivered by different individuals. The manager should speak to all who are involved in monitoring and support to confirm their roles, the confidentiality and the timetable involved emphasising the confidentiality requirements. It is important that everyone follows the Capability Support Plan, including the timescale. If the plan is to be amended the reason should be discussed and agreed with the employee in advance.

### 5.5 Review Meeting *(Please refer to Guidance Section 8)*

Following the period of support and monitoring a review meeting will be held in accordance with the timescale determined in the Support Plan. Any written evidence

must be provided in advance of the meeting, with sufficient time for both parties to give due consideration of the content of the documents.

The employee should receive a letter from the manager prior to the meeting, confirming the date, time and venue, also asking him/her to bring any evidence they wish to present to the meeting.

*Use model letter 3, Appendix 2 to invite employee to review meeting.*

At the review meeting the manager will discuss progress against the Support Plan using the evidence/feedback collected. The employee will be invited to respond.

The manager will then decide which of the following three outcomes is appropriate: -

#### **I. Successful**

That the employee has achieved and maintained the required standards of job performance, as the Support Plan has been successfully completed.

#### **II. Partially Successful**

That the employee has demonstrated some improvement but not sufficient to fully satisfy all the required standards of the post. This will require a further period of support and monitoring with an updated Support Plan, followed by a further review meeting and subsequent decision. At this further stage it is likely that the decision taken will be either i) or iii), with a third period of support and monitoring being appropriate only in exceptional cases.

There may be occasions where specific targets are given greater weighting, and that if they are not achieved, despite others having been met, a decision is made that the individual has been unsuccessful, as per iii). In such situations, the individual will be made aware, before the plan has commenced, of the significance of certain targets, when applicable.

#### **III. Unsuccessful**

That the employee has failed to show sufficient improvement towards achieving the targets to satisfy the manager that the individual is capable of achieving and maintaining the required standards of performance in the post. This will result in the invoking of a Capability Panel Hearing.

*Use model letter 4, 5 or 6, Appendix 2 to confirm the outcome of the meeting.*

### **5.6 Unavailability and Sickness Absence**

If an employee is absent due to sickness during the Capability process, the manager should determine the nature and likely duration of the absence. Advice may be sought from the Academy Trust Occupational Health provider regarding the employee's ability to take part in the process.

## **6. Capability Panel Hearing (Please refer to Guidance Section 9)**

### **6.1**

A letter giving advance notice should be sent to the employee, informing him/her of the date, time and venue of the Hearing and of the right to be accompanied by a trade union representative /professional association or work colleague.

## 6.2

Any written evidence must be provided in advance of the meeting, with sufficient time for both parties to give due consideration of the content of the documents.

*Use model letter 7, Appendix 2 to request to attend Capability Hearing.*

## 6.3

The Hearing will follow the process described in the Academy Trust Hearings & Appeals Procedure.

## 6.4

If the Capability Panel decide that the employee is not capable of undertaking the duties and responsibilities of his/her post, it should consider: -

- extending the period for improvement and/or modifying the targets, further monitoring followed by the appropriate review process.
- dismissal on the grounds of incapability with an appropriate period of statutory or contractual notice (whichever is greater).
- in some cases, redeployment to a suitable post elsewhere in the Academy Trust may be recommended, if available. Any redeployment process will run concurrently with the employee's notice period and pay protection will not apply in cases of redeployment for reasons of underperformance.
- in cases of dismissal or dismissal with possible redeployment, suspension with pay may be imposed during the notice period.

*Use model letter 8, Appendix 2 to confirm the outcome of the Capability Hearing.*

## 7. Right of Appeal (*Please refer to Guidance Section 9*)

### 7.1

An employee has the right of appeal against any action imposed by the Hearing Panel. This must be submitted in writing within 10 working days of the receipt of the letter detailing the action. The employee will be notified in writing of the Appeal Hearing arrangements, including his/her right to be

accompanied. Advance notification will be given of the date of the Appeal Hearing. Please refer to the Academy Trust Hearings and Appeals Procedure.

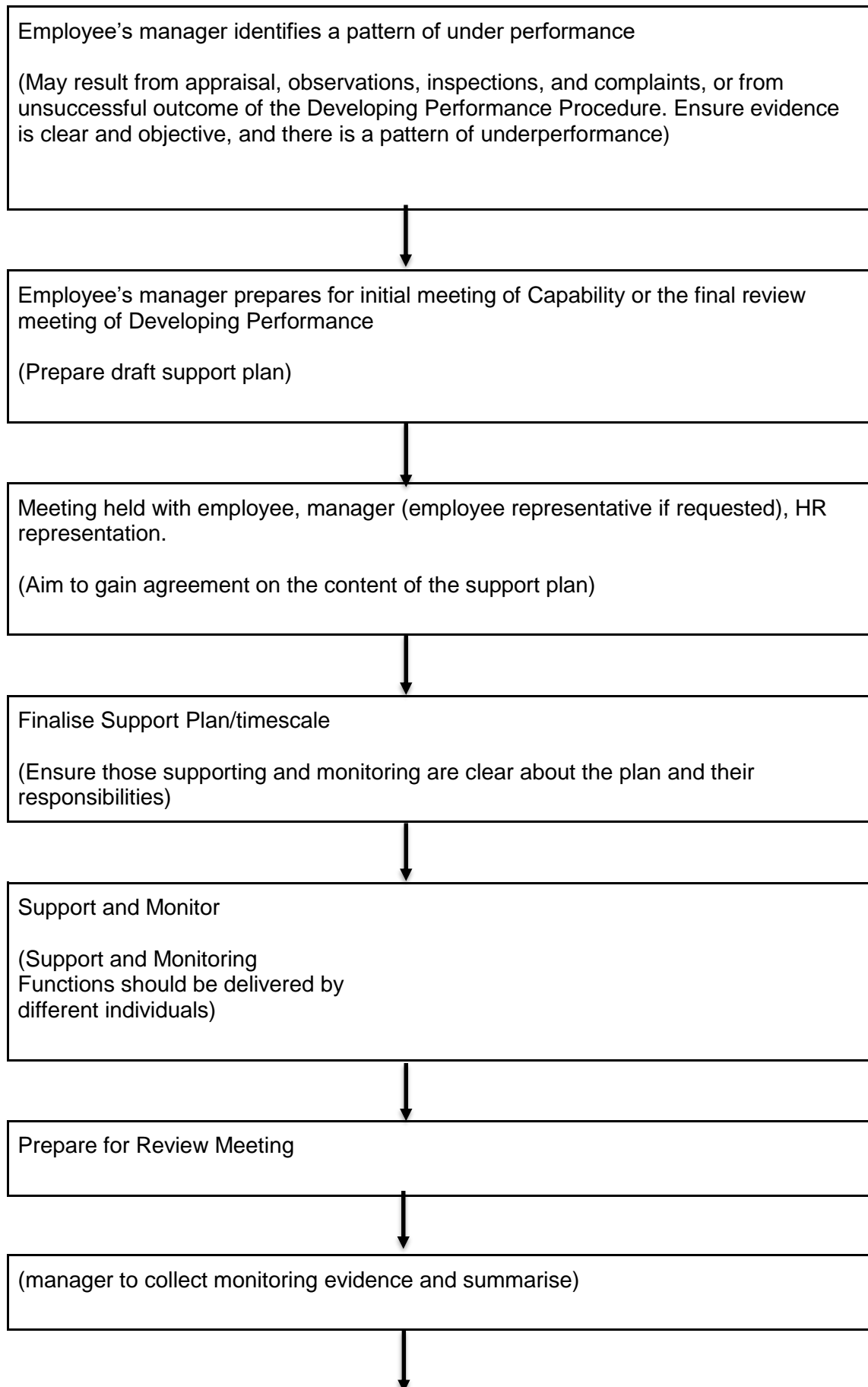
*Use model letter 9, Appendix 2 to request to attend Capability Appeal Hearing, and model letter 10 to confirm the outcome of the Capability Appeal Hearing.*

## 8. Following a Decision to Terminate Employment

### 8.1

Where an employee is dismissed for capability reasons or resigns where he/she may have been dismissed for capability reasons it may be necessary to refer the matter to certain specified regulatory bodies.

## 9. Flow diagram for Capability Procedure



Hold Review Meeting held with employee, manager (employee representative if required), Trust HR provider)

(Make decision on how the matter will progress) Potential outcomes:

**Decision 1 – Successful – Continue with normal performance management**

**Decision 2 – Partially Successful – Review Support Plan and continue for a further period within agreed timescale**

**Decision 3 – Unsuccessful – Arrange Capability Hearing**



Hold Capability Hearing

(following Academy Trust Hearings and Appeals Procedure).



Confirm Outcome of Capability Hearing

**Decision 1 – Extend period for improvement and/or targets.**

**Decision 2 – Dismissal on the grounds of capability with notice. Decision 3 – As an alternative to dismissal and concurrent with notice seek to redeploy.**



Appeal Hearing

(If requested, should be held in accordance with Academy Trust Hearings and Appeals Procedure).



Following Appeal Hearing

Capability Panel confirms outcome in writing

\* Clear records and notes of meetings should be taken and supplied to the employee for his/her comment and agreement. All documentation (letters, support plans etc.) should be stored securely.



## **Appendix 1- Policy Guidance**

### **Section 1: Introduction**

Each section of the guidance corresponds with the relevant section of the Capability Policy and Procedure and is cross-referenced accordingly.

This guidance has been produced both for managers and employees.

Managers are strongly advised to take advice from Trust HR Provider with regards the application of the Capability Policy and Procedure and Guidance at all stages.

### **Section 2: Policy Statement**

*(Links to Policy and Procedure 2.1)*

The aim of the Capability process is to be supportive and offer guidance. However, the seriousness of the situation should be stressed to the employee along with the consequences of failing to make the necessary improvements within a defined timescale.

At any stage of the Capability process, it may be appropriate to consider whether the matter would be more appropriately dealt with under another procedure, for example the Disciplinary Procedure. In such considerations, advice should be sought from the Human Resources service.

### **Section 3: Right to be accompanied**

*(Links to Policy and Procedure 4.1)*

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An employee has the right to representation at the Hearing and Appeal stages of the Capability Policy

An employee also has the right to be accompanied by a trade union representative/professional association or work colleague at other formal meetings of the process i.e. initial and review meetings.

The manager should establish the status of the person accompanying the employee before the start of the meeting. A 'work colleague' is allowed to accompany the employee unless there is a risk that the colleague may be compromised e.g. if he/she may be required to monitor or support the employee or give information about the employee's job performance. If this is the case the employee should be asked to find a suitable alternative colleague to accompany them.

A work colleague who supports an employee will be given paid time-off to undertake this.

## **Section 4: Identification of Performance Problems**

*(Links to Policy and Procedure 5.1)*

The Capability Procedure is a supportive process aimed at returning the employee to a sustainable level of acceptable performance. In order to inform his/her judgement on whether to instigate the Capability Procedure, the manager may need to discuss the matter on a confidential basis with their own line manager and/or the Human Resources service.

In drafting a Support Plan, the content should relate to appropriate professional standards (support staff) or the Professional Standards for Teachers and should also be linked to the employee's Job Description and Person Specification. The manager should consider whether within reasonable limits, input would be helpful from anyone else e.g. a specialist adviser

## **Section 5: Initial Meeting and Support Plan**

*(Links to Policy and Procedure 5.2)*

The purpose of the initial meeting is to hold a two-way discussion concerning the employee's job performance and to agree a Support Plan to cover a defined time period.

If not already covered during the Developing Performance process, the manager should establish whether, in the employee's view, there are any other factors to be taken into account, e.g. working relationships, working conditions, excessive workload, effects of organisational change, work process deficiencies, personal difficulties, health problem and clarify the issues. The manager should consider and discuss, if appropriate, whether there are any issues falling under the Equality Act 2010, e.g. disability.

The employee should be given the opportunity to respond with their views/opinions at every stage of the process.

Targets may be weighted in terms of importance. When this occurs the weighting arrangements and how these may affect the overall outcome of the process should be made clear to the employee at this stage and noted on the Support Plan.

The Support Plan should cover the following: -

- i. specific areas of underperformance to be addressed from the Behaviour and Skills Framework/ Teaching Standards, or other relevant standards, Job Descriptions and Person Specifications
- ii. any weightings attached to the key issues
- iii. the behaviours the employee needs to demonstrate
- iv. the actions that need to be taken
- v. any additional support and/or resources needed
- vi. the arrangements for monitoring and assessment and the timescales involved

vii. the success criteria for each issue

Targets set should be SMART –

- Specific
- Measurable
- Achievable
- Realistic
- Time-bound

Targets may be weighted in terms of importance. When this occurs the weighting arrangements and how these may affect the overall outcome of the process should be made clear to the employee at this stage and noted on the Support Plan. It should not be assumed that just because a weighting has been assigned to the target the employee automatically understands its priority, it is still important for the manager to discuss this directly with the employee.

### **Section 6: Timescales**

*(Links to Policy and Procedure 5.3)*

The timescale is likely to be relatively short if the employee has already been through the Developing Performance process. Precise timings will depend upon the circumstances of each case, primarily the urgency of the situation. A significant deterioration in performance may result in the need to bring forward the date of the review meeting. A four week process is known as ‘fast-track Capability’.

### **Section 7: Monitoring and Support**

*(Links to Policy and Procedure 5.4)*

Employees who are notified of their underperformance should be given a copy of the Capability Policy and Procedure. Consideration should be given to the implementation of support arrangements through a named work contact.

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If an employee is absent due to sickness for a significant period during the process you should refer to the Attendance Management Policy and consult the Trust HR Provider.

The employee should be made aware of staff support available through Health Assured, an employee assistance programme, which offers confidential counselling and support (0800 030 5182)

### **Section 8: Review Meeting**

*(Links to Policy and Procedure 5.5)*

The purpose of the Review Meeting is to assess the employee’s performance against the targets in the Support Plan and to reach a decision regarding how successful the employee has been in meeting those targets. Prior to reaching a conclusion, a two-way

discussion should take place. If necessary, the manager may wish to take some time to consider all the information before communicating the outcome.

Prior to this meeting the Manager should collect and read all monitoring information, clarifying points with the providers of that information where necessary.

It may be helpful to also include performance conversations throughout the review period and an interim review meeting at the half way point in the view period so that any concerns in respect of the lack of progress against the performance targets can be highlighted at the earliest opportunity.

Precautionary action, if appropriate, should be taken by the Headteacher/Executive headteacher after consultation with the Trust HR provider and the Chair of Governors.

### **Section 9: Capability Hearings and Appeals**

*(Links to Policy and Procedure 6 and 7)*

If the employee and/or representative are not available on the proposed date, an alternative date should be agreed as soon as possible thereafter. The employee is legally entitled to one postponement and is required to suggest an alternative date, which must be within 5 days of the original date.

### **Section 10: Support Mechanisms for Improving Work Performance**

The following offers guidance on supporting staff who have been identified as under-performing in their work.

#### **Be Positive**

- At the outset, express confidence in the ability of the individual to meet their targets.
- Begin with an expectation of success as this should increase the employee's confidence.
- Identify positive aspects of the employee's performance and consider how these can be used to support improvement in less successful areas.

#### **Plan Objectively**

- View the process objectively. What is the gap between the existing performance and a fully satisfactory performance? What are the key things that need to happen to 'bridge the gap'?
- Ensure that all relevant aspects of work performance are discussed at the outset (it can be demoralising to have things added to the Support Plan part-way through).

- Agree a manageable overall plan so that the employee is clear about the scope of the work required at the beginning of the process.
- In order to ensure a balanced workload, realistic, achievable targets may need to be incorporated in several consecutive smaller plans so that the employee is not 'outfaced' from the beginning.
- Ensure that targets and success criteria are realistic, clearly specified and SMART.
- Ensure that there are at least some 'quick wins' to help build confidence.
- How will progress be assessed? How will we know when the success criteria have been met? Ensure that evaluation mechanisms are as precise as possible.
- Who needs to be involved in supporting the employee? Arrange any agreed support, including visits, before the plan is finalised. Allow time for the visits to be planned, implemented and evaluated before discussing outcomes and follow up actions.
- What other resources may need to be made available to assist the employee (ensure these are sufficient to help achieve objectives)?
- How long will be needed to demonstrate the required improvement? Adequate time must be allowed for the agreed support to be given and the employee to benefit from it.
- Consider each target separately in terms of the support needed even if this results in the same support mechanisms being used for different targets.

### **Consult Meaningfully**

- Ascertain the employee's opinions as to the support they feel they need.
- How can this be provided effectively?
- Ensure that the employee is clear about the support you have agreed to provide and when/how frequently/for how long it will be in place.
- Ensure that the monitoring and assessment arrangements/timescales are defined.
- Ensure that the employee is clear from the outset about the targets to be met , what the success criteria are and how they will be measured (it is important that employees are made aware of what 'success' will look like from the outset).

### **Separate Monitoring and Support**

- Ensure that different individuals are engaged in the monitoring and support aspects of the process and that time is factored in for this to take place.

- Where the employee would like a person who is monitoring their progress to also offer support, e.g. their line manager or Headteacher/Principal, then this may be possible by agreement.
- Build in adequate time for discussion and evaluation following observation and visits, this should not take place during lunch/break/PPA time.
- Be clear about the purpose of monitoring activities i.e. how will they contribute to the assessment of progress against success criteria?
- Ensure monitoring is clearly focused upon aspects of the plan to be assessed.

Classroom observations should have a clear and known purpose and be directly related to the Support Plan.

### **Follow up each Action**

- Build in time after each observation/visit to discuss learning points and evaluate the benefits.
- Ensure any required follow up actions are agreed and noted.
- Offer balanced, constructive advice and points for further development after each monitoring session.

## Appendix 2 – Supporting Documents

### Model Letter 1 – Request to attend Initial Meeting

Dear **(Name)**

Further to our recent conversation I confirm that I would like you to attend a meeting in order to discuss some aspects of your work and the measures we need to put in place in order to assist you to achieve a sustained, satisfactory standard of performance.

The meeting will be held on **(date at time at venue)**. The main issues to be discussed are as follows: -

*List areas of work performance to be discussed*

This meeting will be held under the Capability Policy, a copy of which is enclosed.

You have the right to be accompanied at the meeting by a trade union representative/professional association or work colleague. Prior to the meeting please let me know who will accompany you.

I enclose a copy of the draft Support Plan which you are asked to consider prior to the meeting so that you can put forward your thoughts on the plan at the meeting.

If you have any queries in advance of the meeting, please let me know as soon as possible.

Yours sincerely

**(Name)**

**(Job Title)**

Encl: Copy of Capability Policy  
Draft Support Plan

Cc Personal File

## Model Letter 2 – Following Initial Meeting

Dear **(Name)**

I refer to the meeting you attended on **(date)** at which we discussed the following aspects of your work performance under the Capability Policy: -

*List areas of work performance discussed*

Following the meeting and full consideration of the points you raised I now enclose the completed version of the Support Plan. Please read this thoroughly and let me know if you have any remaining queries.

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May I please remind you that if you have any concerns at any point during this process then let me know immediately and I will discuss them with you at my earliest convenience.

Yours sincerely

**(Name)**

**(Job Title)**

Encl: Support Plan

Cc Personal File



## Model Letter 3

### – Request to attend a Review Meeting

Dear **(Name)**

In accordance with the timescale agreed previously I confirm that a review meeting will be held in order to discuss progress against the Support Plan, which was designed to assist you in addressing previously identified aspects of your work performance.

This meeting will be held under the Capability Policy, a copy of which was provided to you previously.

The meeting will be held on **(date at time at venue)**.

There are three potential outcomes following the assessment of your performance: -

#### **Either;**

1. Significant and sustained progress has been achieved, enabling the Support Plan process to cease with normal performance management continuing, **or**
2. Some significant progress has been made, enabling the process to continue for a further period of monitoring and support, followed by another review, **or**
2. No, or very little, significant progress has been made and, as a consequence, steps will be taken to consider the termination of employment.

\*I intend that **(name(s)/post(s))** should be present at the review meeting as I believe they will have a useful input to make. However, please be assured that, as far as reasonably possible, the process will be treated as confidential.

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You have the right to be accompanied at the meeting by a trade union representative / professional association or work colleague.

If you have any queries prior to the meeting, please let me know.

Yours sincerely,

**(Name)**

**(Job Title)**

Cc Personal File

\* Delete if appropriate

## Model Letter 4 – Following a Review Meeting – Successful Outcome

Dear **(Name)**

I refer to the recent review meeting held under the Capability Policy to discuss your progress against the previously agreed Support Plan.

I am very pleased to confirm that significant and sustained progress has been demonstrated, enabling the Support Plan process to cease. Normal performance management arrangements will continue.

I would like to congratulate you on making such good progress and look forward to its continuation. Should you wish to discuss any aspect of your work with me in the future please do not hesitate to do so.

Yours sincerely,

**(Name)**

**(Job Title)**

cc Personal File

## Model Letter 5 – Following a Review Meeting – Partially Successful Outcome

Dear **(Name)**

I refer to the recent review meeting held under the Capability Policy to discuss your progress against the previously agreed Support Plan.

Whilst I am pleased to confirm that you have demonstrated some progress, regrettably this is not sufficient to bring an end to the process at this stage.

Accordingly, as discussed, a further period of support and monitoring will take place, with a review on **(date at time at venue)**.

I enclose a copy of your revised Support Plan. As ever, if you have any comments or concerns about the process, at any time, then please contact me without delay.

Finally, may I acknowledge the progress you have made to date and look forward to its continuation during the next period of monitoring and support so that we can bring this matter to a satisfactory conclusion.

Yours sincerely,

**(Name)**

**(Job Title)**

Encl: Revised Support Plan

Cc Personal File

## Model Letter 6 – Following a Review Meeting – Unsuccessful Outcome

Dear **(Name)**

I refer to the recent review meeting, held under the Academy Trust Capability Policy, to discuss your progress against the previously agreed Support Plan.

Following an assessment of your performance I must confirm that insufficient progress has been made and you are not meeting the standards required in your post of **(job title)**.

Accordingly, as discussed, you will be requested to attend a Capability Panel Hearing

I will contact you again shortly with the details of the Capability Hearing. In the meantime, if you have any comments or queries about the process please let me know immediately.

May I remind you of the availability of staff support available through Health Assured, an employee assistance programme, which offers confidential counselling and support (0800 030 5182).

I also advise you to contact your trade union representative/professional association without delay, if you have not already done so.

Yours sincerely,

**(Name)**

**(Job Title)**

Cc Personal File

## Model Letter 7 – Request to attend Capability Hearing

Dear **(Name)**

### Capability Hearing

Further to the recent review meeting and my letter of **(Date)** I confirm that you are required to attend a Capability Panel Hearing on **(Date) at (Time) at (Venue)**.

The Panel will consist of the following: -

(Names)

The Panel will be advised by a member of HR from the Trust HR provider

The management case will be presented by **(Name)**.

You have the right to be represented by a trade union representative/professional association or work colleague, if you wish.

You will be provided with a copy of all documents to be submitted to the panel in advance of the Hearing. If you wish to submit any documents please provide me with these to the same timescale. A copy of the Procedure to be used at the Hearing is enclosed.

Please confirm in writing by **(date)** that you are able to attend and notify me of the name and status of the person who will be representing you. If you have any questions in relation to this letter, please do not hesitate to contact me on the above number.

Yours sincerely,

**(Name)**

**(Job Title)**

Encl: Hearing Procedure

cc Personal File

## Model Letter 8 – Outcome of Capability Hearing

Dear **(Name)**

### Capability Hearing

Further to the Capability Hearing held on **(Date)** I confirm that the Panel's decision was as follows: -

#### Either

\*The panel did not feel that the evidence presented justified the continuation of the Capability Procedure and therefore wish your future performance to be monitored through normal performance management arrangements/and the Capability Procedure\*.

#### Or

\*The panel felt that the evidence presented justified the continuation of the Capability Procedure and therefore wish your future performance to continue to be monitored through this means with a further review by **(date)**. You should note that if your job performance does not reach the required standard by the further review date then your employment may again be considered for termination.

#### Or

\*The panel felt that the evidence presented justified the termination of your employment due to your incapability to perform the duties of your post to a satisfactory standard. In these circumstances you are issued with **(number)** weeks\*/months\* notice that your employment will end on **(Date)**.

You have the right of appeal against this decision and if you wish to appeal you should write to the undersigned within ten working days of receipt of this letter, stating your grounds of appeal.

**(Optional Paragraph – During your notice period you will be/remain\* suspended from duty on normal pay/transferred to the following duties.....\*).**

**(Optional Paragraph – The panel determined that during your notice period efforts should be made to find you suitable alternative employment. Therefore, your line manager will contact you (without obligation on either side) about the possibility of redeployment.**

If you have any questions in relation to the content of this letter, please do not hesitate to contact me on the above number.

Yours sincerely,

**(Name)**

**(Job Title)**

\*delete as appropriate  
cc Personal File

## Model Letter 9 – Request to attend a Capability Appeal Hearing

Dear **(Name)**

### Capability Appeal Hearing

Further to your letter of appeal I confirm that you are requested to attend a Capability Appeal Hearing on **(Date) at (Time) at (Venue)**.

The panel will consist of the following: -

- **(Names)**

The panel will be advised by a member of HR from the Trust HR provider

The management case will be presented by **(Name)**.

You have the right to be represented by a trade union representative/professional association or work colleague, if you wish.

As this is an Appeal, the documents to be submitted to the panel will be the same as those used at the Hearing, with the addition of your letter of appeal. The procedure to be used is enclosed.

Please confirm in writing by **(Date)** whether or not you are able to attend the Appeal Hearing and the name and status of the person who will be representing you. If you have any questions in relation to this letter, please do not hesitate to contact me on the above number.

Yours sincerely

**(Name)**

**(Job Title)**

Encl: Appeal Hearing Procedure

cc Personal File

## Model Letter 10 – Outcome of Capability Appeal Hearing

Dear **(Name)**

### Capability Appeal Hearing

Further to the Capability Appeal Hearing held on **(Date)** I confirm that the Panel's decision was as follows: -

#### Either

\*The panel did not feel that the evidence presented justified the continuation of the Capability Procedure and therefore wishes your future performance to be monitored through normal performance management arrangements/and the Capability Procedure.

#### Or

\*The panel felt that the evidence presented justified the continuation of the Capability Procedure and therefore wishes your future performance to continue to be monitored through this means with a further review by **(date)**. You should note that if your job performance does not reach the required standard by the further review date then your employment may again be considered for termination via this process.

#### Or

\*The panel felt that the evidence presented justified the termination of your employment due to your incapability to perform the duties of your post to a satisfactory standard. In these circumstances the decision of the Hearing Panel to terminate your employment with notice is confirmed.

There is no further right of appeal against this decision.

#### Optional sentence –

During your notice period you will be/remains\* suspended from duty on normal pay/ transferred to the following alternative duties: -

.....

If you have any questions in relation to the content of this letter, please do not hesitate to contact me on the above number.

Yours sincerely,

**(Name)**

**(Job Title)**

cc Personal File