



Capability Policy & Procedure Academies The STAR Multi Academy Trust

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Policy produced for Academies under Local Management of Academies, together with Early Years providers under the HR service provision of North Yorkshire County Council.

Access: If you require this information in an alternative format, such as large type, audio cassette or Braille, please contact the NYHR.

North Yorkshire HR (NYHR)

North Yorkshire County Council, County Hall, Northallerton, North Yorkshire, DL7 8AD

01609 798343

NYHR@northyorks.gov.uk

<http://cyps.northyorks.gov.uk/>

1. Scope

1.1 This policy and procedure applies to staff employed directly by the Academy, 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 Newly Qualified Teachers (NQTs), unless serious capability issues occur

1.2 The policy has been adopted by the Governing Body of this Academy 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/Principal, line manager, Head of Department/Faculty, Academy Business Manager or governor.

1.5 When reading and applying the Policy, managers and employees should refer to the accompanying Guidance. Relevant sections of the Guidance are cross referenced within Section 3 – Procedure.

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 If an employee is currently being managed under this procedure he/she will not be awarded an increment, if he/she were otherwise due to one, (teachers and support staff) or will lose an increment if already at the top of his/her pay band (support staff only) (see '[Increments Policy & Procedure](#)' and Academy Pay Policy).

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

3. Decision Making

3.1 Academy Trust's should insert their scheme of delegation arrangements for staffing decisions. This may include delegation of staffing and dismissal decisions to the Headteacher and/or to a group of trustees or local governors, either with or without the Headteacher. Where delegation is given to a group of trustees or local governors, this may include the establishment of 2 separate panels: a Hearing Panel and an Appeal Panel.

4. Right to be Accompanied

USE ONE OF THE FOLLOWING PARAGRAPHS
(Please refer to Guidance Section 3)

4.1 The Academy extends the right to be accompanied by a trade union representative/professional association or work colleague at all formal meetings and Hearings of the Capability Procedure e.g. initial and review meetings. The accompanying representative has a statutory right to address the meeting but no statutory right to answer questions on the employee's behalf.

OR The Academy 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.

PLEASE NOTE – The second paragraph describes a statutory right

5. Procedure

5.1 Identification of Performance Problems

(Please refer to Guidance Section 4)

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 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.

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 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, 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 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.

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

Model Letter 4

Model letter 5

Model letter 6

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's 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 to request to attend Capability Hearing.

6.3 The Hearing will follow the process described in the Academy 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 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 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

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

Use model letter 9 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. Flowdiagram for Capability Procedure

Employee's manager identifies a pattern of under performance
(May result from appraisal, observations, inspections, and complaints, or from unsuccessful outcome of the Developing Performance Procedure. Ensure evidence is clear and objective, and there is a pattern of underperformance)

Employee's manager prepares for initial meeting of Capability or the final review meeting of Developing Performance
(Prepare draft support plan)

Meeting held with employee, manager (employee representative if requested), HR representation.
(Aim to gain agreement on the content of the support plan)

Finalise Support Plan/timescale
(Ensure those supporting and monitoring are clear about the plan and their responsibilities)

Support and Monitor
(Support and Monitoring
Functions should be delivered by
different individuals)

Prepare for Review Meeting

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(manager to collect monitoring evidence and summarise)

Hold Review Meeting held with employee, manager (employee representative if required), NYH representative.

(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's 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's Hearings and Appeals Procedure).

Following Appeal Hearing
Governors' 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.