

Capability
Policy and Procedure for Schools

Cliffe VC Primary School

Date adopted by School Governing Body (based on NYHR model policy)	14th July 2020

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Policy produced for Schools and Colleges under Local Management of Schools, together with Early Years providers under the HR service provision of NYHR.

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1. Scope

1.1 This policy and procedure applies to staff employed directly by the School , except those in the following circumstances:

- Employees within their probationary period
- 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 School 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, School 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 or work colleague at all formal meetings of this process including the Hearing and Appeal stages.

2.3 If an employee is currently being managed under this procedure they will not be awarded an increment, if they were otherwise due to one or will lose an increment if already at the top of their pay band (see 'Increments Policy & Procedure').

2.4 Where a school has not adopted capability issues as a performance criterion under the school's pay policy, 2.3 will **not** apply to teachers. Please note where it has been adopted as a criterion, increment removal will not apply to teachers and therefore a teacher cannot lose an increment that has already been awarded.

2.5 Employees or anyone accompanying employees must not make any electronic recordings of any meetings or Hearings conducted under this procedure.

2.6 Managers are strongly advised to take advise from the HR Advisory Service with regards the application of this policy and at all stage of the procedure.

3. Decision Making

3.1 In line with Sections 35 and 36 of the Education Act 2002 and the School Staffing (England) Regulations 2009, Governing Bodies have the right to delegate initial staff dismissal decisions to the Headteacher or to a group of governors, either with or without the Headteacher. Staff dismissal decision relating to a Headteacher should be delegated to a group of governors. In cases which may result in dismissal with or without notice, a representative of The Director of Children and Young People's Service is entitled to attend. In all cases, the Headteacher may attend to offer advice to all relevant proceedings.

4. Procedure

4.1 Identification of Performance Problems

(Please refer to Guidance Section 3)

Line managers must be clear that 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. This should not come as a surprise to the individual due to the issues having been raised during normal performance management.

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.

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.

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

4.2 Initial Meeting and Support Plan

(Please refer to Guidance Section 4)

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.

4.3 Timescales

(Please refer to Guidance Section 5)

The time allowed for the employee to demonstrate a significant improvement depends on the seriousness of the consequences of under performance. 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 their remaining at work may put them or other people at risk or may seriously detriment service provision. A temporary transfer to another suitable post may be an alternative.

Precautionary action should be taken after consultation with the HR Advisory Service and the Chair of Governors. There are no rights of representation/accompaniment at a precautionary action meeting but if a suitable person is available at the time of the meeting the individual may be accompanied.

4.4 Monitoring and Support

(Please refer to Guidance Section 6)

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 amended the reason should be discussed and agreed with the employee as soon as possible.

4.5 Review Meeting

(Please refer to Guidance Section 7)

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 at least 5 working days prior to the meeting, confirming the date, time and venue, also asking them to bring any evidence they wish to present to the 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.

4.6 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 School's Occupational Health provider regarding the employee's ability to take part in the process.

5. Capability Panel Hearing

(Please refer to Guidance Section 8)

5.1 A letter giving a minimum of 10 working days' notice should be sent to the employee, informing them of the date, time and venue of the Hearing and of the right to be accompanied by a trade union representative or work colleague.

5.2 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.

5.3 The Hearing will follow the process described in the School Hearings & Appeals Procedure.

5.4 If the Capability Panel decide that the employee is not capable of undertaking the duties and responsibilities of their 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 School/Local Authority 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.

6. Right of Appeal

(Please refer to Guidance Section 8)

6.1 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 their right to be accompanied. No less than a minimum of 10 of working days' notice will be given of the date of the appeal panel hearing. Please refer to the Schools' Hearings and Appeals Procedure.

7. Following a Decision to Terminate Employment

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

7.2 During their notice period the employee is likely to be suspended from work, with pay. If redeployment has been recommended the line manager/Human Resources will contact the employee to discuss the possibility of redeployment during the notice period.

8. Flowdiagram for Capability Procedure

Employee's line 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)

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

↓

Meeting held with employee, Line 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
(Line Manager to collect monitoring evidence and summarise)

↓

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

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Hold Capability Hearing
(following Schools' 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.

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Appeal Hearing
If requested, should be held in accordance with School's Hearings and Appeals Procedure).

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Following Appeal Hearing
Governors' Panel confirms outcome in writing

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