
Capability Policy and Procedure for Schools

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1. Scope

1.1 This policy and procedure applies to staff employed directly by the school under the Local Management of Schools arrangements, where the school has adopted this policy except those in the following circumstances:

- Employees 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

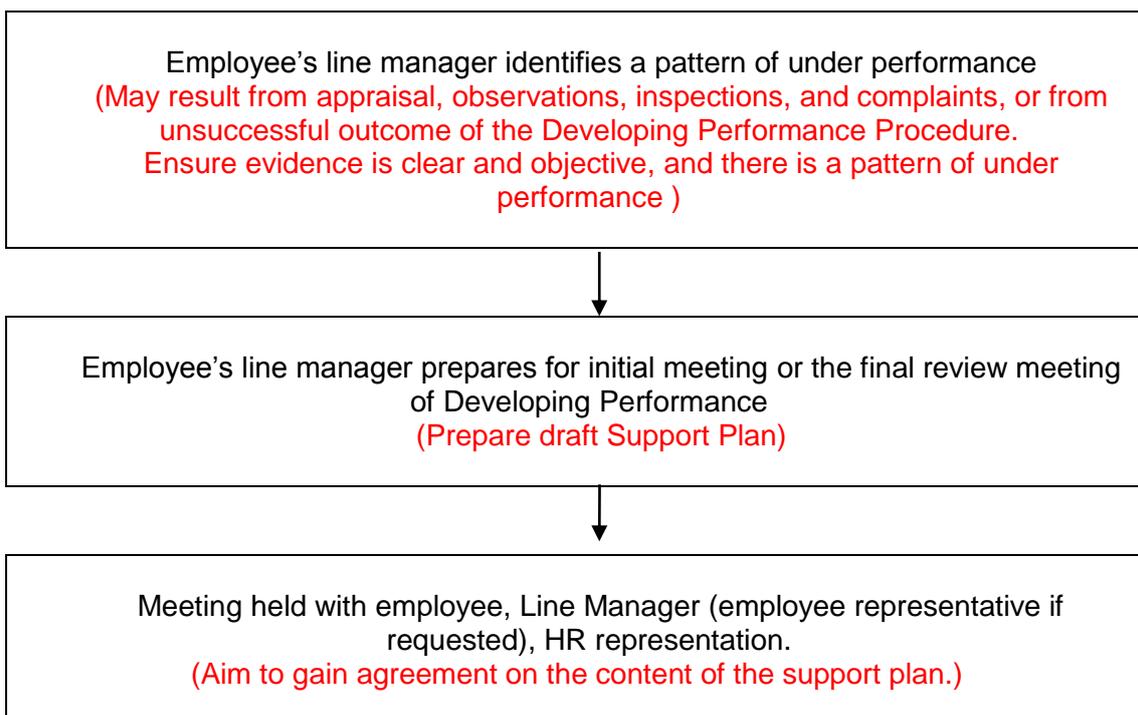
1.2 This procedure is to be used:

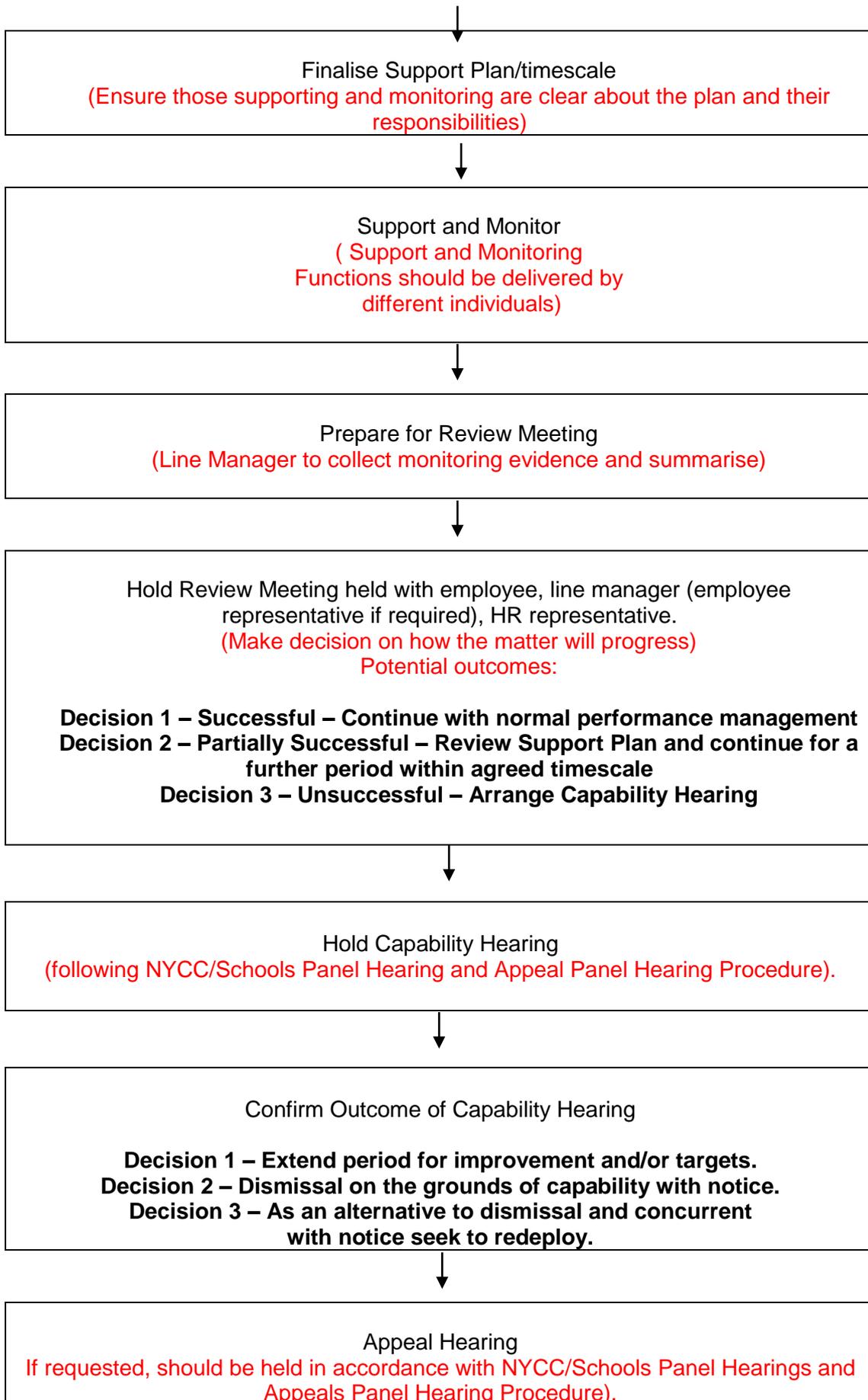
- Where under performance by an individual member of staff has been addressed through the Developing Performance Procedure and has not resulted in the individual making the necessary improvements in performance.

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.
- 1.3 The Capability process is to be supportive and offer guidance. However, the seriousness of the situation will be stressed to the employee along with the consequences of failing to make the necessary improvements within a defined timescale. Employees are entitled to be supported by a trade union representative or work colleague throughout this formal process.
 - 1.4 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 your HR Adviser.
 - 1.5 Whenever a concern is raised during the Capability process, it should be dealt with as promptly as possible within this procedure. Should it not be possible to resolve the matter in this way, it may be necessary to follow the Resolving Issues at Work Procedure.
 - 1.6 If an employee is currently being managed under this procedure they will not be awarded an increment if they were otherwise due one or where appropriate will lose an increment if already at the top of their pay band (see “A Guide to Increments”).
 - 1.7 Where a school has not adopted capability issues as a performance criteria under the schools pay policy, 1.6 will **not** apply to teachers. Please note where it has been adopted as criteria, increment removal will not apply to teachers and therefore a teacher cannot lose an increment that has already been awarded.

2. Flowchart for Capability Procedure







Following Appeal Hearing
(Line Manager and HR Representative confirm outcome (Schools = Governors' Panel).
If suspended employee remains so during notice period. If redeployment recommended whilst on notice, Line Manager to discuss.)

* 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.

3. Identification of Performance Problems

3.1 Concerns over an individual's job performance may arise through a variety of sources. Some points of reference include: the County Council's Codes of Conduct and Practice, expectations defined in the Staff Charter, professional codes of practice and corporate/directorate policies and procedures. The Authority's Behaviour and Skills Framework will be used as an important guide in measuring effective work performance as will the Professional Standards for Teachers, 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 under performance sufficient to warrant dealing with the matter through the Capability Procedure

3.2 Where the manager feels the issues should be addressed through the Capability Procedure then the manager should:

- Speak confidentially 1:1 with the employee
- Ask them to attend a meeting giving a minimum of 5 working days notice
- Make them aware that the purpose of the meeting will be to discuss concerns regarding their performance
- Offer them the right of representation
- Provide them with a copy of the Capability Policy.

Where the issues have been considered under the Developing Performance procedure but the required level of performance has not been achieved, prior to the review meeting the employee will be given a minimum of 5 working days notice that the likely outcome will be a move to capability, and offered the right to be accompanied by a trade union representative or work colleague.

3.3 In preparation for the meeting the manager will produce a draft Support Plan and give it to the employee for consideration at the Meeting. The Support Plan should relate to appropriate sections of the Behaviour and Skills Framework or Professional Standards for Teachers or other appropriate

occupational standards and should also be linked to the employee's appraisal objectives, Job Description and Person Specification.

Model Support Plan

- 3.4 Where the Capability process follows on from Developing Work Performance, the Capability Support Plan must relate to issues previously raised.

4. Initial Meeting and Support Plan

- 4.1 Employees have the right to be accompanied by a trade union representative or work colleague. The accompanying representative has a right to address the meeting but no right to answer questions on the employee's behalf. Normally a HR representative will also attend the meeting. In the case of teachers it may be appropriate to invite a colleague from the Q&I Service. The employee should be informed in advance who will be attending where possible.

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

- 4.3 If not already covered through the Developing Performance Procedure, 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 problems - 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.

- 4.4 Following a full discussion of the issues raised, including the draft Support Plan, a structured Support Plan will be agreed and confirmed in writing covering the following:

- Key issues to be addressed from the Behaviour and Skills Framework/Teaching Standards, Job Descriptions and Person Specifications
- Any weightings attached to the key issues
- The behaviours the employee needs to demonstrate
- The actions that need to be taken.
- Any additional support and/or resources needed.
- The arrangements for monitoring and assessment and the timescales involved.
- The success criteria for each issue

- 4.5 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.

- 4.6 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. Timescales

- 5.1 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.
- 5.2 While the timescale will be determined case by case, evidence of a significant improvement will usually be required, within eight weeks/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.
- 5.3 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. This precautionary action should be taken after consultation with a Human Resources Representative of appropriate seniority and a senior manager. 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.

6. Monitoring and Support

- 6.1 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 will be discussed and agreed with the employee as soon as possible.
- 6.2 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 Human Resources.

Employees who are notified of their under performance should be given a copy of the Capability Policy and Procedure. Consideration must be given to the implementation of support arrangements through a named work contact and the employee should be made aware of the the Councils Employee

Assistance Programme, Health Assured, who can provide confidential counselling and support (0800 030 5182)

7. Review Meeting

- 7.1 Following the period of support and monitoring a review meeting will be held in accordance with the timescale determined in the support plan. Beforehand, the Manager should collect, read all monitoring information and clarify any points with the information providers. Any written evidence must be provided in advance of the meeting, with sufficient time for both parties to give due consideration to the content of the documents.
- 7.2 The employee should receive a letter from the manager, a minimum of 5 working days before the meeting, confirming the date, time and venue. [Use model letter 3 to invite employee to review meeting.](#) Any written documentation should be provided in advance of the meeting, with sufficient time for the employee to give due consideration to the content of the documents.
- 7.3 At the meeting the manager will discuss progress against the Capability Support Plan using the evidence/feedback collected. The employee will be invited to respond.
- 7.4 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 to confirm the outcome of the meeting.

[Model Letter 4](#)

[Model letter 5](#)

[Model letter 6](#)

8. Capability Panel Hearing

- 8.1 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. If the employee and/or representative are not available on the proposed date, an alternative date should be agreed as soon as possible thereafter
- 8.2 [Use model letter 7 to request to attend Capability Hearing.](#) 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.
- 8.3 This follows the format for all NYCC Panel Hearings & Appeals. Please refer to the Panel Hearing and Appeals Panel Hearing Procedure (including schools).
- 8.4 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 County Council may be recommended, if available. Please refer to the Redeployment Policy and Procedure. This process will run concurrently with the employee's notice period and Pay Protection does not apply in cases of redeployment for reasons of under performance.

[Use model letter 8 to confirm the outcome of the Capability Hearing.](#)

9. Right of Appeal

- 9.1 An employee has the right of appeal against any action imposed by the 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 NYCC Panel Hearings and Appeals Panel Hearing 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.

10. Following a Decision to Terminate Employment

- 10.1 During their notice period the employee is likely to be suspended from work, with pay. If redeployment has been recommended during the notice period, the line manager/HR will contact the employee to discuss the possibility of redeployment.
- 10.2 Where an employee is dismissed for capability reasons or resigns where they may have been dismissed for capability reasons it will be necessary to refer the matter to certain specified regulatory bodies.