



Boroughbridge High School and King James's School Federation

## Guidance for Schools' Capability Policy & Procedure

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Policy ratified by Governors	March 2021
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Due for review by Governors	March 2024
Staff Lead	HR Advisor

**Significant Revisions since last review :**

No revisions since last review.

Policy review as part of full review of HR policies under the Federation.

## Guidance for Schools’ Capability Policy & Procedure

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**Guidance produced for Schools by NYHR.**

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

**NOTE :** Reference to “school” in this document applies to Boroughbridge High School, King James’s School or the Boroughbridge High School and King James’s School Federation.

## **Section 1: Introduction**

This guidance accompanies and should be read in conjunction with the Capability Policy and Procedure for Boroughbridge High School and King James's School.

Each section of the guidance corresponds with the relevant section of the Capability Policy and Procedure and is cross-referenced accordingly. Links are also provided to template letters and model documents to be used at relevant stages of the procedure.

This guidance has been produced both for managers and employees.

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

**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.**

## **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: Identification of Performance Problems**

*(Links to Policy and Procedure 4.1)*

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 HR Advisory Service.

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

## **Section 4: Initial Meeting and Support Plan**

*(Links to Policy and Procedure 4.2)*

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. 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.

**If not already covered during the Capability 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 problems - and clarify them 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. Key issues 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.

### **Section 5: Timescales**

*(Links to Policy and Procedure 4.3)*

It is not possible to provide a timescale to suit all cases. However, as a general guide a 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. 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 6: Monitoring and Support**

*(Links to Policy and Procedure 4.4)*

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 Human Resources service.

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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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 7: Review Meeting**

*(Links to Policy and Procedure 4.5)*

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.

Precautionary action, if appropriate, should be taken by the Headteacher/Principal after consultation with the HR Advisory Service and the Chair of Governors.

### **Section 8: Capability Hearings and Appeals**

*(Links to Policy and Procedure 5 and 6)*

The Capability Hearing will be heard by either the Headteacher or a Panel in line with section 3 (decision making) of the Policy and Procedure as follows:

- 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.
- Where staff dismissal decisions are delegated to a group of governors, governing bodies must appoint 2 separate panels of not less than 3 governors each, to sit on a Capability and an Appeals Committee. Where the minimum requirement of 3 governors cannot be met a panel may comprise of 2 governors, however the number of members on the Appeals Committee must be not less than the number on the Capability Panel, and no governor may sit on both committees. 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.
- A governor must not sit on a Capability Panel where there may be any form of conflict of interest or personal connection with the employee or have had any prior involvement in the case. Staff governors should also not take any part in formal committees considering capability issues.
- In exceptional circumstances, a governor from a different school may form part of the composition of a Capability Panel.

- In cases where the Headteacher requires support from the Chair of Governors during the capability process, the Chair of Governors should not sit on the Capability Panel in order that he/she can provide this support.
- It is advised that a representative of the HR Advisory Service will attend Capability and Appeals Hearings to offer advice to the panel.

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 9: 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 there are a number of '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 support 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.
- What 'milestones' will need to be achieved along the way? Build these into the plan/timescale
- Consider each target separately in terms of the support needed even if this results in the same support mechanisms being used for several 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.
- 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
- 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 constructive advice and points for further development after each monitoring session



## **Section 10: Roles and Responsibilities for Dealing with Capability Issues**

<b><u>Type of Staff Requiring Support</u></b>	<b><u>Lead Responsibility</u></b>	<b><u>Support Roles</u></b>	<b><u>Notes</u></b>
Headteacher/Principal	Chair of Governors with appropriate Adviser	HR Service Possibly other educational advisers	Seniority of support roles may depend on size/type of school Possible involvement of another senior Governor
SMT Members	Headteacher/Principal possibly with appropriate Adviser	HR Service Possibly other educational advisers	Possible involvement of Chair of Governors or another senior Governor
Teachers (Secondary School)	Head of Department	HR Service Head of Faculty Subject Adviser	General support from Headteacher/Principal or other SMT member
Teachers (Primary School)	Headteacher/Principal	HR Service Educational Adviser and/or Subject Adviser	Possible involvement of Deputy/Asst Headteacher/ KS Co-ordinator
Support Staff (Secondary School)	Line Manager	Possibly HR Service School SMT Member Possibly Specialist Adviser	General support from Headteacher/Principal /Business Manager, depending on level of post
Support Staff (Primary School)	Line Manager	Possibly HR Service Headteacher/Principal or other SMT Member Possibly Specialist Adviser	Involvement depends on size of school. In small primary schools Headteacher/Principal will be the only line manager

**Section 11. Model Letters**

**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.

.....  
OPTIONAL PARAGRAPH

You may choose to be accompanied at the meeting by a trade union representative or work colleague. Prior to the meeting please let me know who, if anyone, 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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OPTIONAL PARAGRAPH FOR SCHOOLS THAT HAVE ADOPTED OR ADAPTED THE NYCC INCREMENTS POLICY. **Please amend as appropriate as teachers cannot lose an increment that has already been awarded.**

As explained, I confirm that issues raised in this process may have a detrimental effect upon your increment. If your review is during this process you will not receive an increment and, your salary will be reduced by one increment point if you are at the top of the band in accordance with the document "A Guide to Increments"

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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 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/ TIME) at (VENUE).

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OPTIONAL PARAGRAPH FOR SCHOOLS THAT HAVE ADOPTED OR ADAPTED THE NYCC INCREMENTS POLICY. **Please amend as appropriate as teachers cannot lose an increment that has already been awarded.**

As explained, I confirm that issues raised in this process may have a detrimental effect upon your increment. If your review is during this process you will not receive an increment and, your salary will be reduced by one increment point if you are at the top of the band in accordance with the document "A Guide to Increments"

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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 School's 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 Governors' Capability 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.

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OPTIONAL PARAGRAPH for Schools that subscribe to Health Assured

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).

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I also advise you to contact your trade union representative 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**

Date

Dear

**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 Governors: -

(Names)

The panel will be advised by a member of the NYCC Human Resources service.

The management case will be presented by (Name).

You may be represented by a trade union/professional association representative 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**

Date

Dear

#### **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**

Date

Dear

**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 Governors: -

(Names)

The panel will be advised by a HR representative.

The management case will be presented by (Name).

You may be represented by a trade union/professional association representative 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**

Date

Dear

#### **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/remain\* 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