



NORTH BIRMINGHAM ACADEMY

STAFF CAPABILITY PROCEDURE

1 Introduction

- 1.1 This capability procedure is designed to help all Academy employees to achieve and maintain acceptable standards of capability, efficiency, attendance and work performance. The main purpose of the capability procedure is to encourage a member of staff (the respondent), whose work performance and/or attendance is unsatisfactory, to improve. At its extreme, capability action may result in dismissal.
- 1.2 The instigation or operation of the procedure cannot be delayed or suspended in the event of the respondent lodging a separate grievance or complaint of harassment or discrimination against the Academy or one of its employees. The respondent should raise any such grievance, complaint or appeal instead through and as a part of the capability procedure.

2 Scope

- 2.1 This capability procedure deals with the underperformance of staff and applies to all Academy employees. Advice is available to the Principal from the Academy's HR provider.
- 2.2 Capability includes skill, aptitude, efficiency, health and any other physical or mental quality affecting the performance of duties. Lack of capability is defined as the failure of a member of staff to perform his or her duties consistently to a professionally acceptable standard. Capability proceedings may arise from a single incident or a number of separate incidents.

3 Representation

- 3.1 Throughout the process, the respondent may be accompanied at formal meetings by a friend, colleague or other representative. In this case, the respondent should make their own arrangements to be accompanied in this way. Where the chosen representative is not available at the proposed time and date, the respondent may propose an alternative time. If this suggestion is reasonable and falls within 5 working days of the original date, the meeting should be postponed to that date and time.
- 3.2 The representative may address the meeting and confer with the employee but may not answer questions on their behalf. The representative may, however, ask questions of the Principal and any witnesses.

4 Informal Procedure

- 4.1 Most issues of capability are best dealt with informally by the respondent's supervisor (their line manager, mentor or other member of staff assigned to provide professional support). This can often lead to a speedy resolution of the problem.
- 4.2 Where the Principal or other line manager has concerns about a member of staff's performance, they should examine the areas of underperformance, decide whether there is evidence to confirm the concerns and decide what action should be taken to help the respondent to achieve acceptable standards of performance in their duties.

5. Investigation and Counselling – Stage 1

5.1 Where a teacher's performance may not be reaching an acceptable professional standard and the discussions held under 4. Have not resolved the matter, the Principal or nominated member of the senior leadership team should investigate and collect evidence. Once the facts are gathered and the seriousness of the problem established the Principal shall decide whether

- the matter does not warrant further action under the procedure.
- the situation should have been dealt with under the normal arrangements for staff supervision and support and make arrangements for this to take place.
- to arrange a meeting to discuss concerns and counselling.

Where it is decided to arrange a meeting to discuss counselling, the teacher should be advised to consult his/her Teacher Association.

The procedure to be applied where a Principal's performance may not be reaching an acceptable professional standard is detailed in Section 9.

5.2 Counselling

The teacher should be invited in writing to a meeting where the Principal's concerns are presented to him/her. At least five working days notice of the meeting be given and shall include a copy of these procedures if one has not been given to the teacher previously. The teacher is entitled to be accompanied by a Teacher Association representative or a friend of his/her choice.

The Principal should explain the nature of the concerns. Discussion should not harass the teacher or turn into a formal interview. The teacher should be given the opportunity to respond. Explanations should be considered carefully and the procedure discontinued if it becomes evident that there is no case to answer or

that the performance is related to other factors which are more appropriately addressed outside these procedures.

If the Principal decides to proceed with the counselling stage the teacher must be clear what is required, how performance will be reviewed and that the formal procedure will commence if there is insufficient improvement. Counselling and informal coaching should be offered to encourage and help the teacher to improve over a review period of 7 weeks.

A date should be set in discussion with the teacher and representative for a review meeting at the end of the 7th week. A brief written record of the meeting should be made which will include the agreed outcomes. A copy of the record will be given to the teacher and a further copy included for their representative.

Counselling should be conducted discreetly and a brief note of any advice or coaching given over the 7 week review period should be kept and a copy given to the teacher.

5.3 Review meeting

At the end of the review period a meeting will be held to discuss and share evidence as to whether satisfactory progress has been made.

The options will be:

- to decide that the matter does not warrant further action under the procedure.; or
- to extend the informal counselling where only minor concerns remain, or
- to convene a formal meeting under Stage 2 below. The date for that meeting should be set in discussion with the teacher and representative. This should be within a reasonable time scale of normally no more than 10 working days.

Where the teacher's performance improves sufficiently for no further action to be taken at any stage of the procedure, the procedure will be terminated. However

where there is renewed concern within the following twelve months there is no requirement to repeat the Counselling stage.

6 FORMAL ACTION – Stage 2

6.1 The Principal shall review the facts and information gathered, adding to it where appropriate, then write to the teacher setting out the area(s) of concern and the evidence supporting the concerns and inviting the teacher to a meeting. The teacher may be accompanied by a trade union representative or a friend of his/her choice. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this Section of the procedures. Copies of any documentation to be used at the meeting shall be sent with the written notice at least five days before the meeting to ensure that the teacher has enough time to prepare his or her response to the concern(s). A copy should be included for the teacher's representative.

6.2 First meeting

The purpose of the meeting shall be:-

- (a) to define the aspects of capability which are a matter of concern to the Principal;
- (b) to allow the teacher and/or the teacher's representative to comment and/or offer an explanation;
- (c) for the Principal to decide, having regard to (a) and (b) above, whether his or her concern(s) remain and if no concern remains, for the Principal to confirm in writing that no further action will be taken.
- (d) for the Principal, if concern(s) remain, to inform the teacher of them and decide what reasonable targets and standards are to be set, what programme of action, including support, is to be arranged, how long each part of that programme shall last, and how it shall be monitored and evaluated. *This will be known as the first assessment period.*

- (e) where (d) applies, to arrange for the programme of action to be reviewed in a second meeting in the thirteenth working week from the date of the first meeting under the formal stage and set the date for that meeting in discussion with the teacher and the teacher's representative.

6.3 Notes of the meeting, including the programme of action shall be sent to the teacher within five working days of the meeting together with a copy for the representative.

6.4 **Second meeting**

At the second meeting in the thirteenth working week from the date of the first meeting under the formal stage, progress will be reviewed against the targets, standards and programme of action. Copies of any evidence to be presented on the teacher's performance should be sent to the teacher at least five working days beforehand, including a copy for the teacher's representative. The teacher or the teacher's representative will have the opportunity to comment upon his or her performance and make appropriate representations. At the conclusion of the meeting the Principal will either

- (a) decide that performance is now reaching an acceptable professional standard, which will be confirmed in writing and to take no further action; or
- (b) decide that the teacher's performance, or certain aspect(s) of it, remains a cause for concern, confirm the nature of that concern, note any improvements, decide whether to modify the targets, standards, programme of action and arrangements for monitoring and evaluation over a period of a further thirteen weeks. This will be known as the second assessment period. The Principal will arrange a third meeting which will review progress and will take place in the thirteenth working week after the date of the second meeting and the date for that meeting should be set in discussion with the teacher and the teacher's representative.

In the case of (b) the Principal will warn the teacher that if the improvement which is still required has not been achieved by the date of the third meeting the matter will be

referred for a formal hearing which may lead to the dismissal of the teacher and be referred to the General Teaching Council. This formal capability warning must be confirmed in writing and the teacher told of their right of appeal against the warning.

Notes of the meeting, including the programme of action and formal capability warning where appropriate shall be sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

- 6.5 If the teacher wishes to appeal against the warning then they must put their appeal in writing within 10 working days of the date of the letter confirming the warning. The letter must give the basis for the appeal and be sent to the Clerk to the Governors who will arrange for the appeal to be heard by the Appeals Committee within 15 working days. Arrangements will be in accordance with the disciplinary procedures adopted by the Academy. The teacher will be given 5 days notice of the date of the hearing. Where the teacher's representative cannot attend on the date proposed the teacher can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the date proposed by the employer.

The Appeals Committee may determine:

either

- that the appeal should be upheld, the warning lifted and the matter referred back to the Principal to review their concerns and the teacher's performance

or

- that the appeal be dismissed and the warning stands.

The appeal process will run concurrently with the second assessment period of thirteen weeks.

6.6 Third meeting

The third meeting under the formal stage will take place within the time set out in 4.4 (b) above. Progress will again be reviewed against the targets, standards and programme of action, subject to any modifications to these as a result of the second meeting. As with the previous meetings, copies of the evidence on the teacher's performance should be sent to the teacher five working days beforehand, with a copy for the teacher's representative. The teacher may be accompanied by a teacher association representative or friend of the teacher's choice and the teacher or the teacher's representative will have the opportunity to comment on his or her performance. At the conclusion of the meeting the Principal will either

- (a) decide that performance is now reaching an acceptable professional standard and to take no further action; or
- (b) decide that the teacher's capability remains a cause of concern and this matter should be referred to the governors for a formal hearing under stage 3 of this procedure.

6.7 The third meeting shall be recorded in writing and a copy sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

7 PROCEDURES FOR A FORMAL HEARING BY THE STAFF DISMISSAL COMMITTEE – Stage 3

7.1 The procedures for conducting a formal hearing by a committee of the governing body shall be in accordance with the disciplinary procedures adopted by the Academy.

7.2 The options available to the Staff Dismissal Committee hearing the case are to:

- take no action in relation to the teacher
- determine that a further defined period for improvement should be allowed
- determine that the teacher should cease to work at the Academy.

8 APPEALS

- 8.1 The teacher will have the right of appeal against a decision that he/she should cease to work at the Academy. A teacher who wishes to exercise the right of appeal should notify the clerk to the governors within ten working days of the date of the letter notifying them of the decision of the Staff Dismissal Committee.
- 8.2 An appeal against the decision of the Staff Dismissal Committee shall be heard in accordance with the appeals process within the disciplinary procedures adopted by the Academy.
- 8.3 The options available to the Appeals Committee are to:
- dismiss the appeal
 - uphold the appeal.
- 8.4 If the Academy dismisses a teacher for lack of capability the case must be reported to the General Teaching Council in accordance with the General Teaching Council for England (Disciplinary Functions) Regulations 2001 as amended by the General Teaching Council for England (Disciplinary Functions) (Amendment) Regulations 2003

9 PRINCIPAL

- 9.1 In the event of concerns arising about the capability of a Principal (as defined) in 2.3 above) the Chair of Governors will take advice from the Academy's HR adviser before taking any action
- 9.2 Where concerns exist the Chair of Governors, supported by an external adviser where appropriate, shall discuss with the Principal ways in which these can be addressed and offer such support as may be necessary appropriate in accordance with the 'Investigation and Counselling - Stage 1' of these procedures.
- 9.3 Where action under Stage 1 of the procedures does not resolve the concerns then the Chair of Governors will follow the subsequent stages of the procedure supported by an external adviser where appropriate

10. EXCEPTIONAL CIRCUMSTANCES

- 10.1 This Section of the procedures may not be used during the Investigation and Counselling Stage (1) of these procedures.
- 10.2 In extreme cases where the education of children is likely to be seriously jeopardised the period of improvement shall be four weeks. The guidance notes should be read and advice sought before embarking on this Section of the procedures. The Principal will write to the teacher explaining that he or she considers that this is an extreme case in which the education of students is jeopardised, setting out the evidence supporting this allegation, and inviting the teacher to a meeting, at which the teacher may be accompanied by a teacher association representative or a friend of the teacher's choice. It shall be explained to the teacher that the meeting is being held in accordance with the provisions of this Section of the procedures. Copies of any documentation to be used at the meeting shall be sent with the written notice. In order to ensure that the teacher has enough time to prepare his or her response to the concern(s) reasonable notice of the hearing should be given. This should be at least ten working days. It is advisable to agree a date with the teacher's union/professional association before sending the formal instruction to attend the hearing.
- 10.3 The purpose of the meeting shall be:-
- (a) to define the aspects of capability which lead the Principal to allege that the education of students is jeopardised and why it is not appropriate to use or continue to use the formal procedure set out in Stage 2;
 - (b) to allow the teacher and/or the teacher's representative to comment and/or offer an explanation;
 - (c) for the Principal to decide, having regard to (a) and (b), above whether to confirm or withdraw the allegation(s) of lack of capability which severely jeopardises the education of the students;
 - (d) for the Principal, in the light of (c) above, to take one of the following options

- take no further action under this Section of the procedures;
- follow or continue to follow Stage 2 of these procedures;
- issue a formal capability warning to the effect that a period of four working weeks will be given for the teacher to achieve reasonable targets and standards set by the Principal. At the end of which period, if those targets and standards have not been met, the matter will, subject to the teacher's right of appeal under this Section of the procedure, be referred for a formal hearing, which may lead to the dismissal of the teacher;

If the Principal adopts either of the last of these options the Principal will also decide what targets and standards are to be set, what programme of action, including support, is to be arranged, how long each part of that programme shall last and how it shall be monitored and evaluated.

Under (d) above the Principal may decide to arrange for direct supervision of the teacher's work for a specified period during the four weeks.

- 10.4 A copy of the notes of the meeting shall be sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.
- 10.5 The Principal should arrange for a review meeting to be held after four weeks unless the teacher appeals against the warning under this Section, in which case the review meeting will take place as early as possible after the outcome of the appeal is known. The date of the meeting should be set in discussion with the teacher and their representative.
- 10.6 The teacher shall have the right of appeal against a formal capability warning given under 10.3 (d) above. The teacher may appeal by giving written notice of the appeal and the grounds on which it is made to the clerk to the governing body within ten working days of the date of the letter confirming the warning. The teacher must state the grounds of appeal in advance of the appeal hearing. The hearing of the appeal shall be in accordance with the procedures set detailed in the disciplinary procedures adopted by the Academy. The teacher will be given 5 days notice of the date of the hearing. Where the teacher's representative cannot attend on the date proposed the

teacher can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the date proposed by the employer.

The options available to the Appeals Committee which shall be as follows:

- dismiss the appeal;
- uphold the appeal and direct that the Principal shall proceed under Stage 2 of these procedures
- uphold the appeal and direct that no further action shall be taken under these procedures.

10.7 At the second meeting the teacher may be accompanied by a teacher association representative or friend of the teacher's choice and at that meeting progress will be reviewed. At the conclusion of that meeting the Principal will either:

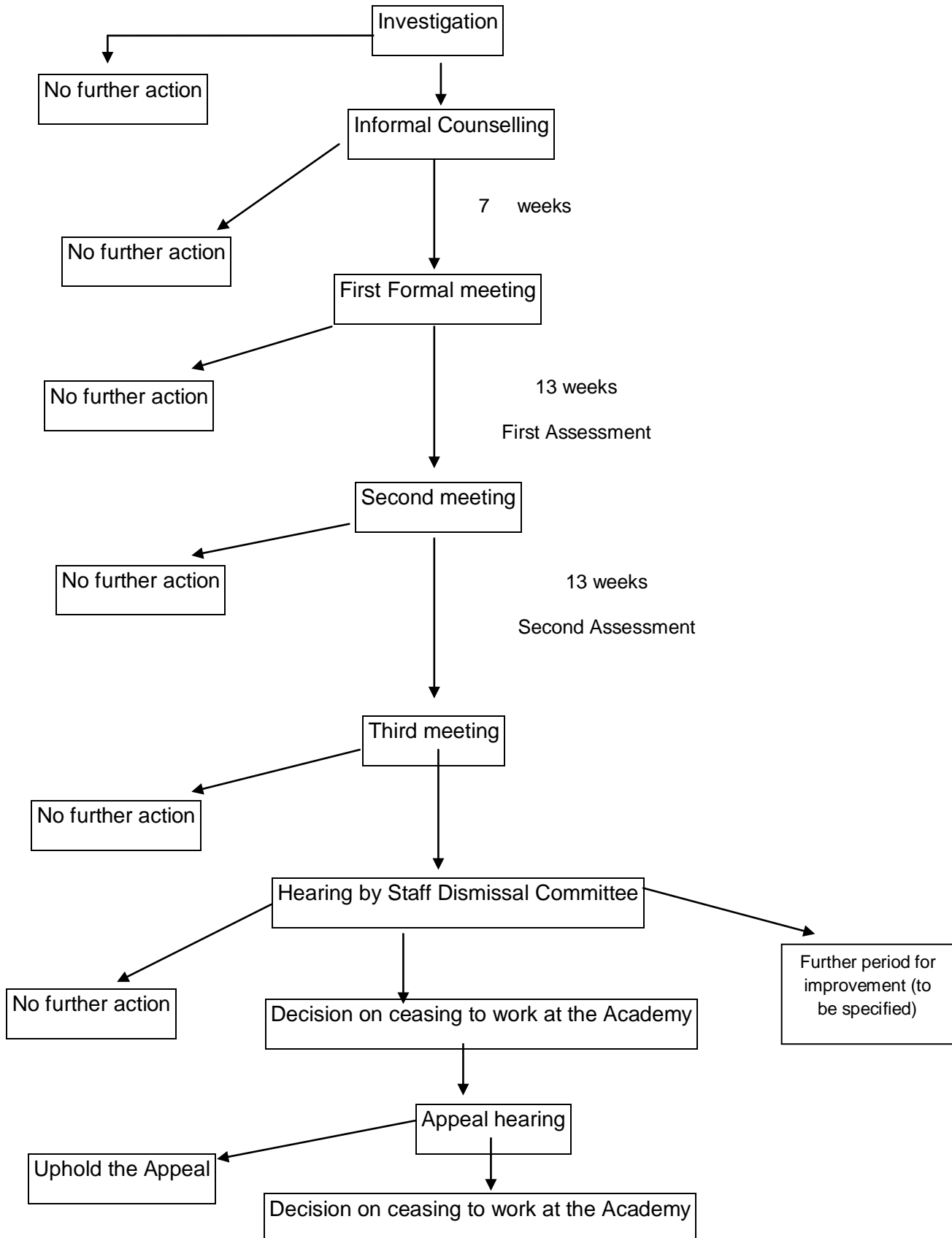
- (a) decide that performance is now reaching an acceptable professional standard and to take no further action
- (b) decide that the extreme concerns no longer apply and that action may now be taken in accordance with Stage 2 of this procedure
- (c) decide that the teacher's capability remains a cause of concern and this matter should be referred to the governors for a formal hearing.

10.8 The second meeting shall be recorded in writing and a copy sent to the teacher within five working days of the meeting together with a copy for the teacher's representative.

11 SUSPENSION

- 11.1 The governing body and the Principal both have the power to suspend any person employed to work at the Academy where, in the opinion of the governing body, or, as the case may be, of the Principal, the exclusion of that person from the Academy is required. Any such suspension should be carried out in accordance with the procedure detailed in the Model Disciplinary Procedure adopted by the Academy and with advice from the Academy HR Adviser.

DIAGRAM TO ILLUSTRATE CAPABILITY PROCEDURES



Approved by NBA Governing Body on

Date of Next Review.....

Lead Manager: