



Sheep Dip Lane
PRIMARY SCHOOL

Capability Policy

Autumn 2019

Status	Statutory
Governing Body Committee	Finance, Facilities, Human Resources, Premises (FFHR)
Responsible Persons	Mrs F Parish Head Teacher
Date the policy was agreed	September 2019
Review date	September 2020

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Sheep Dip Lane Primary School: Capability Policy Reviewed: July 2018, September 2019

Introduction

The governing body is required to have a Capability Procedure to deal effectively with allegations of poor performance or unacceptable levels of skill or aptitude. This procedure applies to Teachers, Support Staff and Head Teachers about whose performance there are serious concerns that the Appraisal process has been unable to address.

Purpose and Principles

A Capability Procedure is necessary for promoting fairness and order in the treatment of individuals and is designed to help and encourage all employees to achieve and maintain high standards of job performance. For examples of areas which may give rise to concern, see appendix 1.

All staff must have ready access to this procedure and are entitled to complete confidentiality in relation to personal, professional and medical information.

This procedure applies to:

all teachers and Support Staff employed by the school, including the deputy head teacher and Headteacher, except NQTs and staff still in their probationary period (see below);

The procedure does not apply to: Newly Qualified Teachers (alternative procedures are in place for newly qualified teachers during their period of induction); schools meals staff employed by Catering organisations or other external catering contractors; employees of external contractors and providers of services (e.g. contract cleaners).

At every stage in the procedure, with the exception of the management period (see para 5), the employee will:

- be advised in writing of the nature of the performance concerns against him or her;
- have the right to be accompanied by their trade union representative, professional association representative or work colleague and by no-one else;
- Have a right of appeal against any penalty imposed.

Extenuating Circumstances

Ill health and absence

Where it is established that the employee's unsatisfactory performance is caused by ill health, the School's Managing Attendance procedure should be followed.

Where poor performance is due to an employee having a disability, this procedure should be adapted to meet the requirements of the Equality Act 2010. For example, in addition to the support offered, reasonable adjustments to assist the employee reach the required standard must be considered.

Where an employee becomes sick, having entered Capability Procedures, it may be necessary to refer the employee to the Occupational Health Physician, **but this will not be automatic**. Advice should be sought from the Schools' HR advisor.

Short absences should not delay any part of the Capability Procedure.

Misconduct

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases the Disciplinary Procedure should be used rather than the Capability Procedure.

Definition and Separation of Roles

Employees: Every employee has a contractual responsibility to perform at an appropriate level. Employees are, therefore, expected to be committed to achieving appropriate levels of performance.

The Head Teacher: In all cases, except where the Head teacher is the subject of concerns, formal Capability meetings for teachers and Support Staff will be arranged and conducted by the Head Teacher. The Head teacher will consider the evidence, reach a conclusion and issue a warning as necessary. They will specify the improvement required and support to be provided as part of the warning process.

Chair of Governors: It is possible that as part of the normal working relationship between the Head Teacher and Chair of Governors, they will have discussed details of concerns about the employee. If that is the case, the Chair of Governors can take no part in appeal hearings or in dismissal hearings. In cases where the Head Teacher is the subject of concerns, the Deputy Head will carry out the functions normally allocated to the Head Teacher in this procedure. They will take advice from the school's HR advisor. The Deputy Head will be responsible for organising hearings or appeals at any stage.

Other Governors: The governing body has quite specific tasks to perform under this procedure in relation to appeal and dismissal hearings, when they will be expected to form a panel of three Governors. Governors who are employees of the school should not form part of the panel. It is inappropriate for Governors to be involved in detailed discussion or consideration of performance concerns at any other time. It is also inappropriate for details of any capability cases to be discussed at a full meeting of the governing body.

Expert Advice: The Head Teacher / Deputy Head or Chair of Governors may need to seek expert advice at the outset of the process or at any of the formal meetings. Advice from an HR professional should be sought.

Capability Procedure

This procedure applies only to teachers or Head teachers about whose performance there are serious concerns that the appraisal process has been unable to address. At least five working days' notice will be given of the formal capability meeting.

The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

MANAGEMENT PERIOD

Before embarking on the Capability Procedure, management should ensure that through the normal Appraising Teacher Performance:

- the employee has been alerted to concerns;
- the employee has an agreed job description, which is fully understood and that there is a clear agreed expectation of standards of performance;
- a programme of support has been arranged for the employee in line with school's appraising teacher performance policy (e.g. regular meetings, monitoring, objectives set, training and mentoring), and has been well documented and can be provided in written form; and
- A reasonable timescale for improvement has been set and the employee has been informed of the programme of support in writing.

Additional documents to be used alongside this policy are within the appendices:

Capability Procedures for teaching staff.

Policy Agreed: 14th September 2019

Signed Head Teacher:



Signed: Chair of Governors: D Wright

Policy to be reviewed in Autumn 2020

The Capability Procedure

See the flowchart in Appendix 2)

Appraisal management will be suspended when an employee enters the Capability Procedure. Confirmation of this must always be given in writing.

1) Formal capability meeting

Where performance concerns have been unsuccessfully addressed and managed using the normal appraisal management channels (see section 5), the employee should be invited in writing to attend a Formal Capability meeting with their union representative or work colleague and no-one else. At least five but no more than ten working days' notice will be given. The invite will contain sufficient information about the performance concerns and possible consequences to enable the employee to prepare their case for the formal capability meeting. Any copies of written evidence will be enclosed with the letter together with a copy of the Capability Procedure.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Head teacher capability meetings) or Head teacher (for other teachers).

The meeting allows the teacher, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting *for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.*

In other cases, the meeting will continue.

During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, *for example which of the standards expected of teachers are not being met;*
- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;*)
- explain any support that will be available to help the teacher improve their performance;

- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be *between **four and six weeks***.

It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place).

- At this stage, after reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the reviewer will decide;
 - (a) whether to allow a further period of monitoring
 - (b) to issue a warning
 - (c) to issue a final written warning (serious cases only)
- If a formal warning is given, this must be confirmed in writing within 3 working days of the meeting, the opportunity to appeal the decision and clear information about possible outcomes and the next stage;
- Notes must be taken of the meeting and a copy given to the employee.
- Warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

2) Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

3) Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, (date agreed in the letter confirming the outcome of the formal capability meeting) unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see the following section 5).

4) Formal review meeting

Arranging a Formal review meeting

The formal review meeting allows the employee to prepare a response to concerns about performance and make his/her case in the company of their union representative or work colleague.

The employee must receive written notice of the meeting, **at least 5 but no more than 10 working days in advance by recorded delivery or delivery by hand** of:

- The purpose, time and place of the meeting;
- Specific concerns, confirming that this is a formal meeting under the Capability Procedure;
- A copy of this procedure (if not provided previously);
- The right to be accompanied by a work colleague or his/her trade union representative (and no one else);
- Details of who will be attending the meeting (e.g. Head, employee, expert witness/es);
- Relevant documentation (e.g. copies of objectives, the support provided, review meeting minutes).

If an employee is unable to attend a formal interview he/she may choose to provide written permission to the effect that his/her representative may act on full authority and he/she will accept any decision that their representative has been party to. He/she may also choose to provide a written response.

Alternatively, if he/she cannot attend for a genuine reason, and are not willing for his/her representative to act on their behalf, it may be reasonable to arrange another interview. However, if the employee fails to attend for a second time, management can make a decision based on the facts and evidence gathered during the review period in the employee's absence.

Conducting a Formal Review Meeting

Follow the meeting guidelines set out in para **1**).

Outcome of Formal Review Meeting

There are four possible outcomes to the formal review meeting:

- **Outcome 1**
Sufficient improvement, in which case the capability procedure will cease and appraisal process will resume. See Appendix 3 transition back to Appraisal
- **Outcome 2**
There has been some improvement, and there is confidence that more is likely, but further support or monitoring is required and the monitoring and review period will be extended. The extension of the monitoring period in all cases should be between 4 and 6 weeks.
- **Outcome 3**
If no, or insufficient improvement has been made, the employee will receive either a first written warning if one wasn't issued at the commencement of the capability meeting or a final written warning. Where a final written warning is issued the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal.

If the employee received a final written warning at the first formal capability meeting then a decision meeting will be arranged (see the following paragraph). The outcome of the decision meeting will be either that there has been sufficient improvement, or that dismissal proceedings will be started.

5) Decision meeting

As with formal capability meetings and formal review meetings, at least **five working days but no more than 10 days in advance by recorded delivery or delivery by hand.**

There are two possible outcomes of the Decision Meeting:

- **Satisfactory Performance**
Performance has been satisfactory and there is sufficient confidence that it can be maintained. In these circumstances the Capability Procedure will end and the appraisal process will resume with a letter from the Headteacher; stating that the improved performance must be sustained. See Appendix 3 transition back to Appraisal
- **Unsatisfactory Performance**
If performance is unsatisfactory, a recommendation to dismiss may be made by the Headteacher or a panel of three Governors (see para 6). The Head teacher or a panel of Governors may take the decision to suspend the employee pending the Hearing.

At the decision meeting, the Headteacher or Chair of Governors should:

- identify the professional shortcomings;
- Identify the performance concerns, the support already given during appraisal management, monitoring and review period. The standards required and where the shortfall in their performance has occurred;
- provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards);
- Consider and discuss any reasons or causes for shortfall. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance;
- Write to the employee within 3 working days of the decision meeting recording the outcome and the above points. Hand-deliver the letter or send by recorded post.

6) Decision to dismiss

The power to decide that members of staff should no longer work at this school rests with the Governing Body.

7) Dismissal

Once the Governing Body has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. (This responsibility may be delegated to the Head Teacher). Where teachers work solely at this

school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days (or *substitute alternative*) of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

8) The Hearing

A panel of 3 governors are appointed to hear the case which is presented by the Headteacher.

The employee will be given at least 10 working days' notice in writing of the hearing.

The letter will contain:

- The purpose, time and place of the hearing;
- The right to be accompanied by a work colleague or his/her trade union representative (and no one else);
- Details of who will be attending the meeting (e.g. Head, employee, expert witness/es);
- The requirement for the employee to provide to the school, at least 3 working days before the Hearing, hard copies of all documents that he/she intends to present at the hearing and enough copies for all those, except witnesses who will be present at the Hearing;
- All relevant documentation that will be used as evidence at the hearing (e.g. copies of objectives, the support provided, review meeting minutes).

Copies of all relevant documents will be sent by the school to the panel members 2 days before the Hearing.

At any hearing where dismissal is to be considered, the following provisions apply:

At any community or voluntary controlled school (where the local authority is the employer)

The Local Authority must be invited to send an adviser. This provision applies whether or not the school subscribes to the local authority HR Advice service.

A copy of the letter will be sent to the Director of Children's Services within 14 calendar days. The Director of Children's Services will then formally confirm dismissal by letter to the employee.

At any voluntary aided or foundation school or academy where the governing body has formally granted advisory rights over dismissals to the Authority,

The Local Authority must be invited to send an adviser. This provision applies whether or not the school subscribes to the local authority HR Advice service.

A copy of the letter will be sent to the Chair of Governors within 14 calendar days. The Chair of Governors will then formally confirm dismissal by letter to the employee.

At any voluntary aided or foundation school or academy where the governing body has **not** granted advisory rights to the Authority

The school should seek advice and support from their chosen HR provider.

A copy of the letter will be sent to the Chair of Governors within 14 calendar days. The Chair of Governors will then formally confirm dismissal by letter to the employee.

Dismissal on the grounds of capability is a dismissal with notice.

9) Appeals

An employee may appeal against any warning given or on a decision to dismiss. Appeals at any stage should be made within 5 working days of the receipt of the warning or dismissal letter. Appeals must be made to the Chair of Governors, who will arrange a panel of 3 governors who have not previously been involved in the case to hear the appeal within 10 working days or as soon as possible thereafter.

The employee will provide, in at least 3 working days before the hearing, all documents that he/she intends to present at the hearing. The documents must be presented in hard copy and with sufficient copies for those, except witnesses, who will attend the hearing. Copies of all the papers to be presented will be sent to panel members 2 working days before the hearing.

Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing.

The decision of an appeal panel at each stage will be final and will be reported to the Governing Body.

The following general points are important:

- An appeal at the formal meeting and review stages will not interrupt the procedure (unless the appeal decision leads to reconsideration);
- An appeal will normally involve a re-hearing of earlier evidence but the request for an appeal should specify the grounds for the appeal and, in particular, whether these refer to the reasonableness of the decision or to procedural matters;
- If either side intends to produce new evidence, all relevant documentation should be circulated in advance within the agreed timescales.

10) Disputes about the procedure

An employee may raise a grievance after capability proceedings have started against him/her. The Headteacher should consider suspending the capability case for a short period, no more than one week, to consider the implications of the grievance on the capability. If the grievance has been raised before the appeal stage of the procedure and the matters of

grievance are linked to those of the capability, then the grievance should be considered within the capability appeals procedure. If the grievance concerns matters that are unrelated to the capability, then a separate process under the Grievance Procedure will need to start.

11) EXPIRY OF WARNINGS & REFERENCES

Any warnings given will remain on file for 12 months or until an appeal has overturned the warning. If an employee is subject to the capability procedure, or has a warning in place at the time of the reference request, this must be referred to in any employment reference.

12) REFERRALS TO STATUTORY BODIES

There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal may have been a likely outcome.

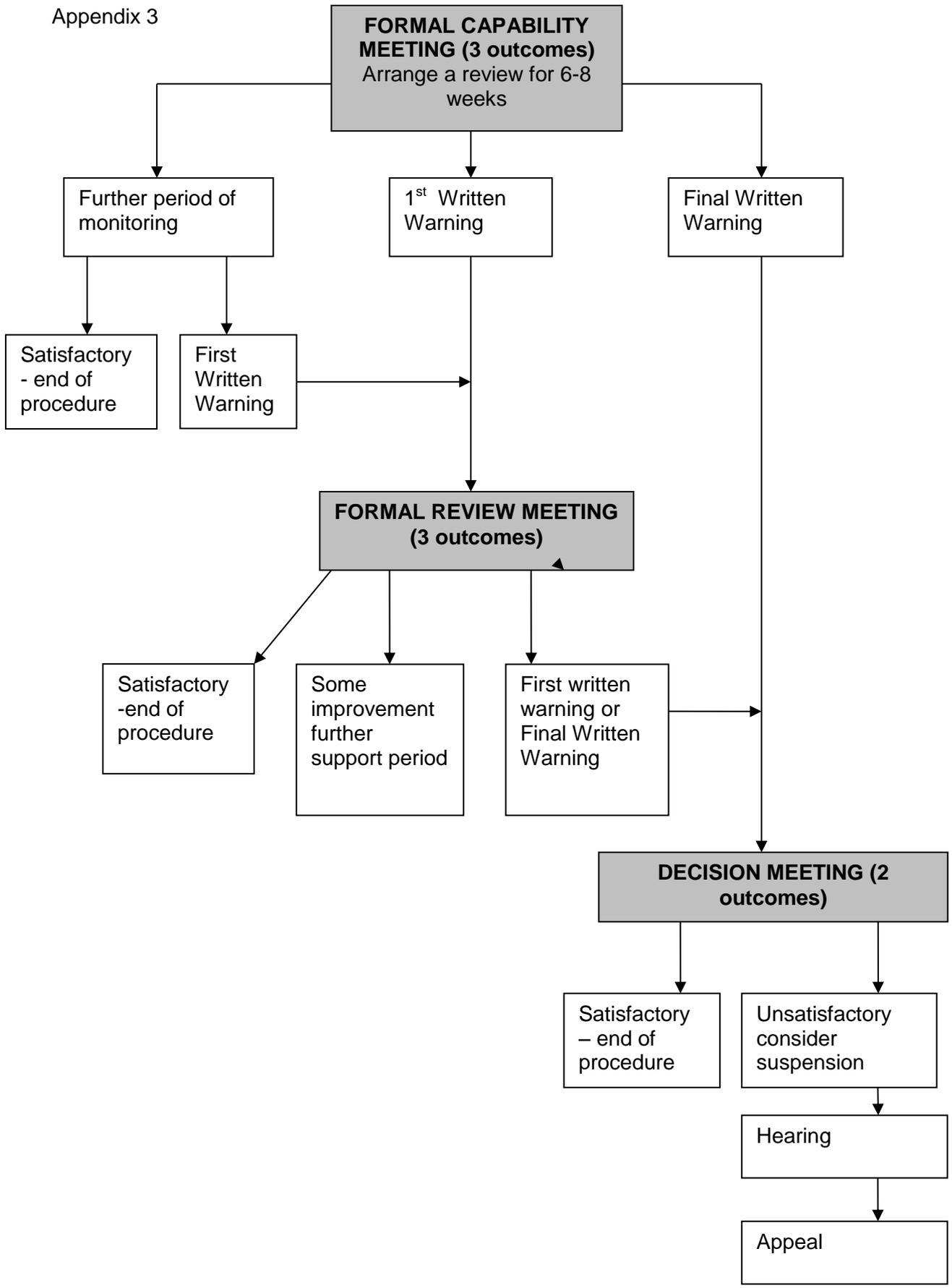
Subject to the passage of the education Bill 2011, it is planned that the GTCE will be abolished at the end of March 2012, and from this point onwards cases of serious misconduct will be considered by the new Teaching Agency, acting on behalf of the Secretary of State.

The following list gives examples of areas in which deficiency in performance may give rise to concern and, in due course, lead to formal action. **This list is neither exclusive nor exhaustive:**

- a) Discharge of specific responsibilities associated with a particular appointment which may include leading, managing or supervising responsibilities;
- b) Compliance with further specific requirements as detailed by the Headteacher or other senior manager and the governing body, which are consistent with the relevant job description or conditions of service of employees in operation at the time;
- c) Failure to reach career stage expectations;
- d) Consistent failure to perform work to a reasonable and acceptable standard;
- e) Organisation of the teaching or work area and management of suitable materials and equipment, including adequate course preparation;
- f) Ability to teach and/or supervise pupils;
- g) Maintenance of an adequate level of class discipline and control;
- h) Setting and appropriate marking of pupils' work;
- i) Keeping suitable records of pupils' work, progress and attainment;
- j) Failure to maintain appropriate standards of accounts or other school records;
- k) Failure to maintain a secure and safe environment.

Some of these areas may be considered as falling into concerns regarding employee conduct and advice should be sought from your HR Service before embarking on this process.

Appendix 3



At each stage if a formal sanction is given the employee has the right to appeal.

TRANSITION BACK TO APPRAISAL

APPENDIX 3

At the point in the procedure where an improvement in performance is recognised and the employee is notified that the Capability procedure will end and the employee will return to the appraisal policy, it is important to ensure that satisfactory performance is sustained for a sufficient period of time.

- a) The employee will be notified in writing that a sufficient improvement in performance has been demonstrated which will bring the formal capability procedure to an end.
- b) The employee will move back under the appraising teachers performance policy into the in accordance with Appendix E of the appraising teacher performance policy : **Provision of Additional Support Where National Standards Are Not Met**
- c) The teacher's performance will be managed in accordance with Appendix E for a short period of time to be ensure that acceptable performance is being sustained.
- d) The period of time in which the teacher remains in additional support will be agreed by the Head teacher.
- e) If during the period of additional support acceptable performance is not sustained the provisions set out in E4 and E5 in Appendix E of the Appraising Teacher Performance will be followed.

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

Part B of the policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. *Schools to say here how they might achieve this, for example, the Head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Head teacher might also wish to be aware of any pay recommendations that have been made.*

Consistency of Treatment and Fairness

The governing body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The governing body is aware of the guidance on the Equality Act issued by the Department for Education.

Definitions

Unless indicated otherwise, all references to "teacher" include the Head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, Head teachers and local authorities.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be *(eg referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures)*. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing body and Head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

The governing body and Head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.