

CABINET MEMBER CHILDREN, SCHOOLS AND FAMILIES

DATE: 14 SEPTEMBER 2010

SUBJECT: REVISED HUMAN RESOURCES POLICY AND PROCEDURE FOR SCHOOLS

WARDS AFFECTED: ALL

REPORT OF: PETER MORGAN
STRATEGIC DIRECTOR OF CHILDREN, SCHOOLS AND FAMILIES

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**EXEMPT/
CONFIDENTIAL:** NO

PURPOSE/SUMMARY:

TO SEEK APPROVAL FROM THE CABINET MEMBER FOR A REVISED CAPABILITY POLICY AND PROCEDURE FOR SCHOOL STAFF.

REASON WHY DECISION REQUIRED:

TO ENSURE THAT SCHOOLS ARE COMPLIANT WITH EMPLOYMENT LAW AND THAT ISSUES OF CAPABILITY ARE DEALT WITH IN A STRUCTURED AND TIMELY MANNER.

RECOMMENDATION(S):

THE CABINET MEMBER IS RECOMMENDED TO APPROVE THE REVISED POLICY AND PROCEDURE

KEY DECISION: NO

FORWARD PLAN: Not appropriate

IMPLEMENTATION DATE: Following the expiry of the "call-in" period for the Minutes of the meeting.

ALTERNATIVE OPTIONS:**IMPLICATIONS:****Budget/Policy Framework:** None**Financial: N/A**

<u>CAPITAL EXPENDITURE</u>	2006/ 2007 £	2007/ 2008 £	2008/ 2009 £	2009/ 2010 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal: None**Risk Assessment:** N/A**Asset Management:** N/A

**CONSULTATION UNDERTAKEN/VIEWS
ALL HEADTEACHERS WERE INVITED TO A MEETING TO DISCUSS THE NEW
POLICY AND PROCEDURE**

**PRIOR TO CONSULTATION THE DRAFT WAS ISSUED TO SELECT HEADTEACHERS FOR COMMENT.
FULL CONSULTATION WITH JTC AND NON-TEACHING UNIONS**

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being	√		
5	Environmental Sustainability		√	
6	Creating Inclusive Communities	√		
7	Improving the Quality of Council Services and Strengthening local Democracy	√		
8	Children and Young People	√		

LINKS TO ENSURING INTEGRATION:

IMPACT UPON CHILDREN'S SERVICES TARGETS AND PRIORITIES:

Key target of Human Resources Service Plan
Policy and Procedure that is compliant with current employment law will lead to less opportunity for claims to Employment Tribunal.
Claims that do come before an Employment Tribunal will have less chance of success.

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT
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BACKGROUND:

1.0 The current Capability policy and procedure is outdated.

1.1 The revised policy was developed following requests from Headteachers

1.2 The revisions have been made to mirror corporate policy and procedure and teachers' terms and conditions, therefore ensuring consistency for all employees, but tailored to meet the needs of schools and Governing Bodies.

1.3 The policy will be commended to all schools for adoption by Governing Bodies although voluntary aided schools may adopt the policy recommended by the Archdiocese or the Diocese.

1.4 It is envisaged that training sessions for Headteachers and Governors will be provided to ensure that the policy is properly implemented.

PROPOSAL

2.0 The Cabinet Member is recommended to approve the proposed policy and procedure and the commendation for adoption to schools.



SEFTON COUNCIL

CAPABILITY

Policy and Procedure for Schools

Produced by Children, Schools and Families, Human Resource Team (Schools).

www.sefton.gov.uk

August 2010

V0.2

School:	
Date Adopted by the Governing Body:	
Signed:	
Chair:	
Headteacher:	

EXAMPLE OF A STAFF CAPABILITY POLICY

Name of School/College: _____

1. The governing body aims:

- 1.1 - to maintain an appropriate high level of staff performance across the school/college;
- to deal with issues of staff competence in a fair and sensitive manner;
- to detect as early as possible signs of falling standards of staff competence, and
- to put into place appropriate support mechanisms.

2. Purpose and Aims

- 2.1 The governing body aims to provide an ethos where high standards of teaching and learning can be fostered. The standards of competence expected of staff and the management of these are contained in the school's/college's Performance Management policy. This procedure provides a framework within which capability issues can be dealt with in a fair and consistent manner.

3. Principles

- 3.1 Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review will help to avoid the need for formal capability procedures. In some cases an improvement may be achieved informally with a minimum of support and attention without recourse to formal procedure. In others a more formal approach will be necessary.

4. Definition

Capability is defined in law as "capability assessed by reference to skill, aptitude, health or any other physical or mental quality" [Employment Rights Act 1996].

5. Scope

These Capability Procedures will apply to all teaching and support staff within the school, including the Head.

6. Relationship with Discipline Procedures:

This policy and procedure does not apply to misconduct, other poor performance is dealt with in a separate Discipline Policy and Procedures. Capability relating to poor health is dealt with under the Attendance Management policy.

7. Responsibilities

7.1 Governing Body

As the employer the governing body must:

- care for the employee;
 - provide appropriate support and access to training for all staff;
- (a) The governing body, through the Chair, will be responsible for dealing with issues surrounding the Head's competence,

EITHER

- (b) The governing body will delegate all responsibility for dealing with issues of staff competence including possible termination of contracts to the Head; and the governing body will appoint an Appeals Panel to hear appeals from the Head's decisions on issues of competence.

OR

- (c) The governing body will delegate to the Head all decisions relating to staff competence up to and including Final Warnings, but any decision about terminating a member of staff's contract of employment on the grounds of capability will be made by a committee of governors appointed for that purpose by the governing body.

7.2 The Head

EITHER

- (a) The Head will have responsibility for managing all issues related to staff competence, including making decisions about action to be taken up to and including Final Warnings;

OR

- (b) The Head will have responsibility for managing all issues related to staff competence, including making decisions about action to be taken, including any decision about terminating a member of staff's contract of employment.
- (c) The Capability procedures may be invoked by the Head when he/she considers that an employee's performance is falling short of the standard required.

7.3 Line Managers

- (a) The governing body has delegated responsibility for dealing with capability issues to the Head, and has delegated the authority to the Head to authorise relevant line managers to take responsibility for dealing with issues of competence at the Informal Stage (i.e. up to the stage where the formal Capability Procedures are invoked.)
- (b) Where there is no acceptable improvement in an employee's performance after appropriate support has been given, the relevant line manager has the duty to report this to the Head.

7.4 Advisory/Support for the employee

Advisory staff e.g. SIPs or other advisers with education and personnel experience may be appointed by the Head to advise the school and where appropriate assist with the process, including supporting classroom observation and providing support.

7.5 The Employee

The school/college must provide the right environment and support to help the employee to improve. However, it is the employee's responsibility to use that support to improve their performance.

7.6 Local Authority

The Director of Children, Schools and Families, or representative, will have the statutory right to attend all formal meetings held in relation to this procedure. This attendance will ensure that advice is available on procedural issues and any employment legislation matters.

8. PROCEDURE

Key Points

- (a) There is an upper limit of two terms for the formal assessment of staff capability. Particularly serious cases may be handled in up to four weeks. The period of assessment may be shortened if justified, for example, where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, or where there is a lack of co-operation with reasonable measures to achieve improvement.
- (b) The short procedure of up to four weeks would apply in particularly serious cases where the education of children is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under a teacher's care fail to progress in that teacher's lessons. Note – this paragraph applies to teaching staff only; not support staff.
- (c) If long-term sickness absence appears to have been triggered by the commencement of a formal capability procedure, the case should be referred immediately to the Health Unit to assess the person's health and fitness for continued employment. Schools must take a considerate and sympathetic approach, but in general the length of time they may wait for a person's health to improve before considering whether to terminate employment on health grounds should be subject to occupational health guidance.

8.1 INFORMAL STAGE

- (a) Where an employee may be under-performing, the Head will arrange for a line manager (or other appropriate person) to conduct an initial assessment. (The Chair of Governors must make arrangements for this to be done if the performance of the Head is in question.)
- (b) Once the facts are gathered and the seriousness of the problem established there are three initial options:
 - drop the matter (no case to answer or trivial);
 - arrange mentoring and support (support without using the formal procedure)
 - arrange (for more serious cases) a formal interview with the Head (or Chair if the Head's competence is in question)

8.1.2 Mentoring and Support

- (a) Mentoring, support and informal coaching should aim to encourage and help the employee to improve. It should be conducted discreetly. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer.

- (b) The teacher/member of support staff must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement. However, if sufficient improvement is made the mentoring and support stage can be extended for a reasonable period of time. A prolonged extension should be avoided.
- (c) A brief note of any mentoring and support should be kept for reference.
- (d) Discussion must not harass the employee or turn into a formal interview. If more serious concerns arise, or if the employee expresses discontent or indifference to the mentoring and support the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

8.1.3 Review

- (a) After a period of review, which should be no longer than six weeks, involving observation and assessment a firm conclusion should be reached. The options will be either to;

drop the matter or extend the mentoring and support period if the employee has made sufficient improvement that it is deemed that a further short period of mentoring and support will enable the employee to achieve and maintain the required standard of performance;
convene a formal interview.

8.2 FORMAL STAGE

8.2.1 Step 1 - Formal interview

- (a) The Head must invite the employee in writing to an interview. At least five working days notice must be given. The employee must also be told that he/she has a right to be accompanied by a trade union representative or a work colleague.
- (b) The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way. It allows the employee to prepare a response to allegations about performance and make a case in the company of a trade union representative or work colleague. The interview may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.
- (c) There are three options at the first formal interview:
 - i) drop the matter
 - ii) mentoring and support (except where already undertaken without improvement). See Informal Stage above.

These two options are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed.

- iii) Issue a notification. Cautions are normally issued incrementally in the following order:
 - oral or written notification
 - a written notification
 - final written notification
- (d) These are relevant to any case where continued concern about the standard of performance is justified. The decision on which level of notification to issue will depend on the seriousness of the problem.
- (e) If performance is unsatisfactory a written notification will normally be the next step and will invoke an assessment period of up to two terms.
- (f) An oral notification may be given, but should not normally be necessary, in cases where mentoring and support has already taken place.
- (g) In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to move directly to a final written notification. This will invoke an assessment period not exceeding 4 weeks. Guidance from the Human Resources Team – Schools must be sought.
- (h) A decision should be made after all the facts and any representations from the employee have been considered. The Head should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.
- (i) Any appeal against a notification must be made within five working days and heard within ten working days of notification of appeal. It must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered. These timescales apply to both teaching and support staff.

8.2.2 Notifications

- (a) Normally the Head will give the written or oral notification to the employee personally.
- (b) Where a formal notification is issued, the Head (or other appropriate person) will use the remainder of the meeting to:
 - i) identify the professional shortcomings;
 - ii) give clear guidance on the improved standard of performance needed to end the capability procedure;
 - iii) explain the support that will be available, and how performance will be monitored over the following weeks;
 - iv) depending on the level of notification issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
 - v) make it clearly understood that failure to improve may ultimately lead to dismissal.
 (or otherwise inform the employee if a personal interview is not possible)

8.2.3 Written Confirmation

- (a) A letter should be sent to the employee immediately after the formal interview (no later than two working days) recording:
- the result of the investigations;
 - the main points discussed at the meeting;
 - confirming the decision;
 - where a notification is issued, giving information about the first assessment, and
 - failure to improve will ultimately lead to dismissal.

8.2.4 Step 2 - First assessment stage

- (a) **Weeks 1 to 20** – In the case of teachers the Head must ensure reasonable observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.

Monitoring of support staff will be conducted by a member of the SLT or the appropriate line manager. The manager must ensure reasonable observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

If at any point during this stage the circumstances suggest a more serious problem the Head may make a decision to move directly to a final written notification.

- (b) **Week 20** - The Head will arrange an evaluation meeting to assess performance over the previous weeks. At least five working days notice must be given for the meeting and the employee will be advised that a trade union representative or a work colleague may accompany the employee at the meeting. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the Head.

8.2.5 Evaluation Meeting

- (a) The Head will conduct the meeting in an appropriately informal manner, but will ensure that the employee is clear about:
- the standards expected;
 - the level of support that has been given;
 - whether the outcome is satisfactory, or not, and
 - if not, the action to be taken.
- (b) The Head may involve advisory/support staff who have been involved in matter to attend the meeting to give advice and provide evidence of the performance of the employee.
- (c) If the Head's view is that the performance of the employee continues to be unsatisfactory the Head will issue a final written notification.
- (d) The Head will arrange for more formal monitoring, evaluation, guidance and support to be given for a further period. Arrangements for this should be explained at the meeting or subsequently. The employee must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal.

- (e) There is discretion to extend the first assessment stage within reason if the employee has demonstrated some improvement and it is believed that the support already in place will enable the employee to perform to and maintain the required standard.

8.2.6 Written Confirmation

The decision and main points of the meeting should be recorded in a letter to the employee. See paragraph 8.2.3

8.2.7 Appeals

Any appeal against a final warning must be made within five working days and heard within ten working days of notification of appeal. The appeal must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

8.2.8 Step 3 - Second assessment stage

- (a) **Weeks 20 to 24** - The Head will ensure regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.
- (b) **Week 24** - The Head will call the employee to a final evaluation meeting to report the assessment of performance over the previous weeks. At least five working days notice must be given for the meeting. The Head will remind the employee that a trade union representative or work colleague may accompany the employee at the meeting. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here.
- (c) If performance is unsatisfactory the employee should be told
EITHER

(where the Head has delegated power to terminate contracts of employment) that the contract of employment will be terminated, and the date on which the contract will end.

OR

The Head will inform the employee that the matter will be referred to the governing body Staff Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known), should be recorded in a letter to the teacher.

8.2.9 Step 4 - Dismissal Committee Stage

- i) The Staff Dismissal Committee of at least three governors appointed by the governing body must hear the representations and recommendations brought by the Head and any representations that the employee may wish to make.

ii) The Staff Appeal Committee must hear any appeal against a dismissal decision made by the Headteacher or the Staff Dismissal Committee.

(a) Information to the Local Authority

The Head must inform the Local Authority that a decision has been taken to EITHER terminate the employee's contract, OR that a decision has been taken to refer the issue to the governing body Staff Dismissal Committee.

(b) Written Confirmation

- i) The Head (or Staff Dismissal Committee) decision must be conveyed to the employee in writing within two working days. If the decision is to terminate the contract the letter must set out:
- ii) the date on which the contract terminates (bearing in mind the contractual periods of notice);
- iii) the employee's right of appeal to the governing body Appeal Panel, and the requirement to make an appeal within five working days.

8.2.10 Step 5 - The Appeal Stage

- (a) Any appeal against a dismissal must be made within five working days in writing. The grounds for appeal must be clearly stated.
- (b) The Clerk to the Governing Body will arrange a hearing as soon as reasonably practicable, and normally within ten working days from the date of the employee's letter making the appeal.
- (c) The employee will be notified of the date of the appeal no less than five working days before the date of the appeal and provided with the management case.
- (d) A Panel of three governors will be appointed by the Governing Body. It will not include the Head, nor Investigating Officer, nor any member of the original Staff Dismissal Committee, nor anyone who has an interest in the issues.

There will be no right of appeal from the decision of the appeal panel.

9. Confidentiality

In order to preserve the rules of the natural justice for the staff member concerned, the Head and governors must ensure that matters relating to the issues are not discussed in governors meetings or meetings within the school or outside, except the meetings called expressly for the purpose of the capability procedures.

10. Equal Opportunities

In implementing these procedures full account must be taken of the school's Equal Opportunities Policy.

11. Monitoring and Review

The Head will report to the governors on the effectiveness of the procedures whenever they have been used.

The governing body will review the procedures when there has been a change to national guidance and in any case every three years.

Signed: _____

Date: _____

Chair of the Governing Body

MANAGEMENT GUIDE

Capability Policy and Procedure

To be read in conjunction with the Capability Policy and Procedure

1. Role of governors

- 1.1 Governors should not normally be involved with a capability procedure before the considering an appeal against a warning, or in a capability procedure against a Head when some governors may be involved in the monitoring and evaluation of performance. It is important to be prepared for the possibility of dismissal.
- 1.2 The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal and dismissal appeal committees. Normally at least three governors are required for the dismissal committee and no fewer for the appeal.
- 1.3 It is not appropriate for parent governors to serve on committees in relation to capability issues as there could be a conflict of interest. However, in a small primary school this may be unavoidable. Staff governors should never participate.

2. Informal Stage

- 2.1 Following the initial assessment, the Headteacher (Chair of Governors, in the case of the Headteacher) will arrange to meet the employee to discuss the nature of the underperformance. The employee is entitled to be accompanied by a Trade Union representative or a work colleague.
- 2.2 An action plan will be available which specifies the current situation, the desired outcomes, timescale and the proposed support for the employee. See appendix 8.
- 2.3 The informal stage will not usually last more than six weeks and will include assessment and observation. Review meetings will be held at regular intervals during this period to monitor progress and the effectiveness of the support provided.
- 2.4 At the end of the sixth week the Headteacher (Chair of Governors in the case of the Headteacher) will arrange to meet with the employee to give the employee the conclusion reached:
 - Drop the matter as sufficient progress has been made. See letter 1b
 - Extend the informal stage as it is deemed that a further short period of mentoring and support will enable the employee to achieve and maintain the required standard of performance.
 - Convene a formal interview. See letter 1a

3. Representation at formal interview, evaluation meetings and dismissal hearing

- 3.1 An employee has a legal entitlement to be accompanied by a trade union representative or work colleague.
- 3.2 If the employee's chosen representative is not available at the time proposed for the interview, meeting or hearing, and the employee proposes an alternative that is reasonable and falls within five working days of the day

proposed for the interview, the school must rearrange the event to the time proposed by the employee.

- 3.3 Where insufficient progress has been made in spite of the support provided by the school, consideration must be given to the use of the school's disciplinary procedure.
- 3.4 The Governing Body must ensure that the terms of reference for the Staff Dismissal Committee allow it to consider and make decisions about capability issues.
- 3.5 The normal arrangements for conducting meetings and hearing appeals apply whether the committee is considering capability or disciplinary issues.

4. Notice of Meetings or Hearings

- 4.1 Notice of five working days must be given for an initial formal capability interview. The date of successive evaluation meetings may be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged.

See letter 1a

- 4.2 Notice of at least five working days must be given for a staff dismissal committee or dismissal appeal hearing.

5.0 Support for the employee

- 5.1 Those monitoring the performance should offer feedback and instruction to help the employee improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure.
- 5.2 The employee should be given a named person for pastoral support throughout the procedure. This person will play no other part in the process.

6. Monitoring arrangements

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

7. Adjournment:

- 7.1 The Head (or Staff Dismissal Committee) may adjourn the proceedings at any stage if this appears necessary or desirable. If the adjournment is for the purpose of enabling further information to be obtained the Head (Staff Dismissal Committee) will specify the nature of that information.
- 7.2 Both parties may ask for an adjournment for the purpose of consultation.
- 7.3 Any adjournment will normally be for a specified time.

8. Written records

- 8.1 A written record should be made of all interviews with the employee and any action taken following such an interview.
- 8.2 Except in agreed circumstances any formal notifications should be disregarded for disciplinary purposes after a specified period of satisfactory performance.
These periods are:
 - 2 terms for an oral or written warning; and
 - 6 terms for a final written warning.

See letters 2, 3 and 4

9. Staff who are absent through illness during the procedure

- 9.1 Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered in the key points above and should be referred immediately to the occupational health service to assess whether the employee is fit for continued employment.
- 9.2 Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the employee to attend evaluation meetings, but where the employee is unable to attend, these may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

10. Decisions on continuing the procedure and recommending dismissal

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the Head, OR Staff Dismissal Committee (except where the Head's performance is being considered, when it is the Chair's responsibility).

11. Disputes about the procedure

Any disagreements or grievances about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

12. Conduct of hearing

Any hearing that takes place to consider dismissal will be conducted under the school's disciplinary procedure. See appendix 9 for the conduct of the hearing.

13. Appeals against formal notifications

- 13.1 If at any stage of this procedure, the employee regards the steps taken or proposed as unreasonable, he/she may ask for a written note of dissent to be recorded on his/her file. This is without prejudice to the employee's rights under the grievance procedure.

- 13.2 Appeals should be made in writing, clearly stating the grounds for appeal, within 5 working days of written confirmation of a formal notification.
- 13.3 Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities. An employee is entitled to be accompanied at an appeal hearing by a colleague or union representative.
- 13.4 An appeal hearing should be arranged within 10 working days of receipt of the written notice of appeal and the employee should receive 5 working days notice of the date and time of the appeal hearing together with the management case.
- 13.5 The appeal decision should be confirmed in writing and the employee told that there is no further appeal against the decision within 2 working days of the hearing.
- 13.6 Where the reasonableness of a decision is being questioned the test that should be applied for overturning a formal warning is that the decision was so unreasonable that it was one that no other Head or manager, acting with proper regard to his or her responsibilities, could have chosen to take.
- 13.7 Where an appeal is upheld the matter should be referred back to the Head to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

14. Grievances

- 14.1 In exceptional circumstances an employee may raise a grievance about the behaviour of the Head or other manager during the course of a capability procedure.
- 14.2 Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Advice must be sought from the HR Team – Schools.
- 14.3 Such a delay should only be considered where there is a strong indication that the employee has been mistreated and consideration should be given to bringing in another manager to deal with the capability case.
- 14.4 Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.

Appendix 1

Letter 1a - Invite to Formal Interview

Dear

Date

Formal Interview One – Capability Procedure

Following the end of the Informal Stage of Capability Procedure it was concluded that a Formal Interview should be convened to review the informal stage of the Capability procedure. The meeting will take place on (date) at (time) in (location).

I will conduct the meeting supported by _____, Human Resources Manager/Officer. You are entitled to be accompanied by a trade union representative or a work colleague.

At this meeting the concerns about your performance will be discussed and you will have the opportunity to make representations. The key causes of concern are:
[List the main concerns](#)

After considering your representations a decision will be made as to how to proceed.

Please confirm your attendance by telephoning me on _____.

Yours sincerely

Appendix 1

Letter 1b – Successful Conclusion to the Informal Stage

Dear _____

Date _____

Following the conclusion of the Informal Stage of the Capability Procedure you have demonstrated that you have met the required standard of performance and no further action will be taken under the procedure as long as you continue to perform to this standard for a further two terms.

Yours sincerely

Appendix 2

Letter 2 – Written Confirmation of Formal Interview (Outcome)

Dear

Date

Following the formal interview which was held on _____ I write to confirm the outcome of the meeting. You were accompanied by your trade union representative.

During the meeting we discussed:

- The results of the investigations – [summarise the results](#)
- The main points of the discussion were – [list the main points of discussion and any support agreed.](#)

After listening to your representations I decided to issue a first formal notification which is effective from _____ until _____. The first 20 week assessment stage of the capability procedure will commence on _____. We agreed the evaluation meeting will be held on (date and time) which is the end of the 20th week. You are entitled to be accompanied by a trade union representative or a work colleague.

You have the right of appeal against my decision. Should you wish to appeal you should do so in writing, clearly stating the grounds of appeal, within 5 working days of receipt of this letter.

You should be aware that failure to improve may ultimately lead to dismissal.

[OR –](#)

I decided to extend the informal stage of the procedure for a further (give number of weeks) as you demonstrated that you have improved your performance. However, if at the end of this period there is no further improvement the first assessment stage of the procedure will begin.

[OR](#)

You demonstrated that you have met the required standard of performance and no further action will be taken under the procedure as long as you continue to perform to this standard for a further two terms.

Appendix 3

Letter 3 – Confirmation of Evaluation Meeting

Dear _____

Date _____

Following the evaluation meeting which was held on _____ I write to confirm the outcome of the meeting. You were accompanied by your trade union representative.

During the meeting we discussed:

- The standards of performance that are required
- The level of support that has been provided
- And whether you have attained the required standard

After considering all the evidence available I conclude that you have not attained the necessary level of performance. I decided to issue a final written notification which is effective from _____ until _____. The second assessment stage of the capability procedure will commence on _____. We agreed the final evaluation meeting will be held on (date and time) which is the end of the 24th week. You are entitled to be accompanied by a trade union representative or a work colleague.

You have the right of appeal against my decision. Should you wish to appeal you should do so in writing, clearly stating the grounds of appeal within 5 working days, of receipt of this letter.

You should be aware that failure to improve may ultimately lead to dismissal.

OR –

I decided to extend the first assessment stage of the procedure for a further (give number of weeks) as you demonstrated that you have improved your performance. However, if at the end of this period there is no further improvement the second assessment stage of the procedure will begin.

OR

You demonstrated that you have met the required standard of performance and no further action will be taken under the procedure as long as you continue to perform to this standard for a *further two terms/six terms

* Delete as necessary

Appendix 4

Letter 4 – Confirmation of Final Evaluation Meeting

Dear

Date

Following the final evaluation meeting which was held on _____ I write to confirm the outcome of the meeting. You were accompanied by your trade union representative.

During the meeting we discussed: [give details for each bullet point](#)

- The standards of performance that are required
- The level of support that has been provided
- And whether you have attained the required standard

[* Delete as appropriate – Heads with delegated powers of dismissal](#)

After considering all the evidence available I concluded that you have not attained the necessary level of performance and I have therefore decided to dismiss you on the grounds of capability. You are entitled to (give notice period) and your last day of service will be (date).

You have the right of appeal against my decision to the Appeals Committee of the Governing Body. Should you wish to appeal you should do so in writing, clearly stating the grounds of appeal, within 5 working days of receipt of this letter. An appeal will be arranged within 10 working days of the date your intention to appeal is received. You will be given 5 working days notice of the date of the appeal hearing.

[* For Heads without delegated powers of dismissal](#)

After considering all the evidence available I concluded that you have not attained the necessary level of performance I have decided to refer the matter to the Staff Dismissal Committee with a recommendation for dismissal on the grounds of capability.

[*Give the date and time and venue for the hearing of the hearing if known.](#) You have the right to be accompanied by a trade union representative or a work colleague. You have the right of appeal against the decision of the Staff Dismissal Committee.

[*If the date is not known](#)

After considering all the evidence available I concluded that you have not attained the necessary level of performance I have decided to refer the matter to the Staff Dismissal Committee with a recommendation for dismissal on the grounds of capability. The hearing will be arranged within 10 working days of the date on this letter and you will be notified of the date no later than 5 working days before the hearing and provided with the management case. You have the right to be accompanied by a trade union representative or a work colleague. You have the right of appeal against the decision of the Staff Dismissal Committee.

Appendix 5

Letter 5 – Invite to Hearing with Staff Dismissal Committee

Dear

Date

Disciplinary Hearing following the conclusion of the Capability Procedure

I am writing to inform/advise you that you are required to attend a disciplinary hearing on at am/pm which is to be held in At this hearing the question of disciplinary action against you, in accordance with the School's disciplinary procedure, will be considered with regard to the following:

- That despite the application of the capability procedure your level of performance has not met the required standard

You should be aware that, if proven, this allegation may result in dismissal.

The Headteacher will present the management case supported by (Human Resources Officer/Manager). The Governors Disciplining Committee will be, who will be advised by..... (Human Resources Officer/Manager) andwill attend as witnesses on the management side.

Any documentation that you wish to be considered at the hearing must be submitted to me at least 2 working days in advance of the hearing date. At the same time, you must notify me of any witnesses whom you intend to call. It should be noted that failure to attend a hearing without good cause is a disciplinary offence and would be added to the allegation(s) considered at the hearing.

You are entitled, if you wish, to be accompanied by a Trade Union representative, a work colleague of your choice.

Yours sincerely

Appendix 6

Letter 6 – Confirmation of Decision to Dismiss

Dear

Date

Dismissal from Employment

I am writing to confirm the decision taken at the disciplinary hearing held on that you be dismissed, in accordance with the School's Disciplinary Procedure. Your dismissal is for some other substantial reason i.e. on the grounds of capability and you are entitled to *months/weeks notice. Your last day of service will be

You were accompanied at the hearing by; the management case was presented by (Manager) and I was advised by (HR Officer/Manager) from the Human Resources Team - Schools. XY and Z attended as witnesses.

The full reasons for your dismissal are as follows:

- That despite the application of the Capability Procedure you have failed to attain the required level of performance. [Provide an explanation for the decision.](#)

Under the School's disciplinary procedure you have a right to appeal against the decision. If wishing to exercise that right, you must do so in writing to the Clerk to the Governors within 10 working days of receiving this letter confirming the decision, setting out in full the grounds of appeal. You must make it clear whether you are appealing against the finding that you are incapable of performing to the required standards or against the decision to dismiss. If you require assistance in preparing your written appeal form and are unable to obtain help from a union or employee representative of your choice, please contact [name of manager] who will be able to help you. Arrangements will then be made for your appeal to be heard in accordance with the procedure. You may also have a right of appeal to an Employment Tribunal within 3 months of the date of your dismissal.

Any appeal will be heard by the Governors Appeals Committee.

Yours sincerely

* [Delete as appropriate](#)

Appendix 7

Letter 7 – Invitation to Appeal Hearing

Dear

Date

Appeal Hearing

I am writing to inform/advise you that an appeal hearing has been arranged on at am/pm which is to be held in At this hearing the question of the decision to issue you with a *an oral notification/first formal written notification/a final written notification/dismissal on the grounds of capability, in accordance with the School's capability procedure will be considered.

The Headteacher will present the management case supported by (Human Resources Officer/Manager). The Governors Disciplining Committee will be, who will be advised by..... (Human Resources Officer/Manager) andwill attend as witnesses on the management side.

Any documentation that you wish to be considered at the hearing must be submitted to me at least 2 working days in advance of the hearing date. At the same time, you must notify me of any witnesses whom you intend to call.

You are entitled, if you wish, to be accompanied by a Trade Union representative or a work colleague of your choice.

Yours sincerely

- [delete as appropriate](#)

Appendix 8

Teacher's Action Plan - Example

Current Position	Required Standard	Support and Mentoring	Monitoring and Evaluation	Time Scale
Planning and Preparation Set out the current position and the issues that need addressing.	Set out the schools expectations and the national standards	Specify what support will be provided and by whom.	Specify how the teacher will be monitored, by whom, and how progress will be evaluated.	
Classroom Management				
Quality of Teaching and Learning				
Learning Environment				
Responsibilities (e.g. any subject co-ordination or TLRs)				

This page is an example only and can be amended for each individual depending on the performance issues that are a cause for concern.

Appendix 9

Conduct of a Disciplinary Hearing

1. Introductions

- 1.1 The Headteacher as Disciplining Officer/Governors Disciplining Committee will introduce those present and explain that the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the School's Disciplinary Procedure. An explanation of how the hearing will be conducted should also be confirmed as set out in paragraphs 2.1 to 5.6 below. The employee should be asked if they understand the allegations, if they have had all the relevant papers and understand the proposed procedure. A reminder should also be made of the need for confidentiality at all times.
- 1.2 If the employee is unrepresented at the hearing, the Headteacher as Disciplining Officer/Governors Disciplining Committee will check prior to the hearing that the employee has been informed of the right to representation. If at this late stage the employee requests representation, the Disciplining Officer will arrange for an adjournment of the hearing for the employee to make the necessary arrangements for representation and briefing.

2. Presenting the Case

- 2.1 The Headteacher as Disciplining Officer/Governors Disciplining Committee will ask the presenting manager to present the facts of the alleged incapability including the calling of witnesses or the use of witness statements and any other supporting documentation or material.
- 2.2 The employee and/or representative will be given the opportunity to question the presenting manager and/or witnesses present at the hearing.
- 2.3 The employee and/or representative will have the opportunity to put forward the details of their case and give an explanation of the alleged incapability, including the calling of witnesses or use of witness statements in support of the employee's case.
- 2.4 The presenting manager will then be given the opportunity to question the employee's witnesses, employee and/or their representative.
- 2.5 The employee and/or representative will be given the opportunity to put forward any mitigating circumstances that they wish to be taken into account. The presenting manager will be given the opportunity to respond to the mitigation.
- 2.6 The Headteacher as Disciplining Officer/Governors Disciplining Committee can ask questions of either side at any stage throughout the hearing. The Headteacher as Disciplining Officer/Governors Disciplining Committee can adjourn the hearing if further investigation is necessary.

3. Summing Up

- 3.1 At this stage, both parties will be asked to sum up their case with the presenting manager going first. No new evidence will be introduced at this stage.
- 3.2 At the end of the hearing the employee should be asked to confirm that he/she has had the opportunity to say all he/she wished to say in respect of the allegations made and that the requirements of the Disciplinary Procedure have been properly complied with and fairly administered.

4. Adjournment and Confirming the Decision

- 4.1 On completion of the hearing, both parties will be asked to withdraw, in order for the Headteacher as Disciplining Officer/Governors Disciplining Committee to consider the appropriate action to be taken. On reconvening, the Headteacher as Disciplining Officer's/Governors Disciplining Committee's decision will be given verbally to both parties. An explanation for the decision will be given together with details of the employee's rights of appeal under the procedure.
- 4.2 The Headteacher as Disciplining Officer/Governors Disciplining Committee may be unable to give a verbal decision immediately following completion of the hearing. In these circumstances the decision will be given in writing within the time limits laid down in the procedure.

5. Records

- 5.1 The ACAS Code of Practice on Discipline recommends that records must be kept of disciplinary hearings and appeal hearings. The records will detail the nature of the misconduct, the employee's defence and mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcomes and any subsequent developments.
- 5.2 Much of this information is recorded in statements of case, witness statements and letters confirming the outcome of disciplinary hearings. To ensure completeness, however, it is important that a note is made of the key points made by all concerned at disciplinary hearings.
- 5.3 A note taker/Clerk to the Governors will make a note of the hearing. In cases involving the Governors Appeals Panel, a note of the considerations taken into account by the Panel in reaching a decision will also be made. This will be carried out by the Clerk to Governors.
- 5.4 The notes do not represent minutes, they are not verbatim, and they are not for agreement by all parties. They are simply a record, which may, if appropriate, be drawn upon as necessary at an appeal or Employment Tribunal.
- 5.5 A copy of the notes will be provided to the employee and his/her representative as soon as practicably possible after the hearing.

- 5.6 The notes will be kept confidential and retained in accordance with the Data Protection Act 1998; they will only be drawn upon, if necessary, relative to the disciplinary hearing and any appeal arising there from.

Appendix 10

1. Conduct of the Appeal Hearing

The following steps should be taken when conducting an appeal hearing:

- 1.1 Introduction of those present should be made to the employee.
- 1.2 Explanation of the purpose of the hearing, how it will be conducted and what powers the Governors Appeals Committee has.
- 1.3 The employee and/or representative should be asked why they are appealing against the formal notification or decision to dismiss.
- 1.4 The presentation of the management case at appeal hearings should be directed at responding to what the appellant submits as his/her grounds of appeal. The management presentation should take the form of addressing the points raised by the appellant and, following from this, justifying the actions taken.
- 1.5 Witnesses should only be called if they have evidence that is directly relevant to the points of issue.
- 1.6 Particular attention should be paid to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.
- 1.7 Once all the relevant issues have been thoroughly explored, the Governors Appeals Committee should withdraw to consider what decision to come to.
- 1.8 The Governors Appeals Committee may uphold, amend or overturn the previous decision given by the Headteacher/Staff Dismissal Committee.
- 1.9 The employee should be informed verbally of the results of the appeal by the Governors Appeals Committee together with the full reasons for the decision and it should then be confirmed in writing no later than 2 working days after the hearing.
- 1.10 Decisions of the Panel will be recorded by means of note taking.