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MEDWAY COUNCIL

EDUCATION DEPARTMENT

CAPABILITY POLICY

First adopted by the Governing Body, December 1995
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This policy was last reviewed to ensure appropriateness and relevance in
December 2021

Model Policy

Capability Procedure

For adoption by schools and Academies

Medway's HR Schools team undertakes to check and review this model policy annually, and where necessary, update it to comply with current legislation and good HR practices.

All trade unions and professional associations formally recognised by Medway Council have been consulted in the development of this policy.

Latest revision – August 2019

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1. Introduction

- 1.1 The success of this school/Academy is dependant upon effective contributions from all its employees. Poor or inadequate performance due to lack of capability is not acceptable in this school/Academy and will be addressed using the Capability Procedure.
- 1.2 Capability refers to the postholder's ability to carry out the duties of the post to the required standard. The required standard must be appropriate to the level of the job and the skills and experience reasonably expected of an individual in that position within that particular school. Headteachers and line managers will need to ensure that each member of staff has the ability, knowledge; guidance and support to perform his/her job to the schools expectations and standards and in accordance with the competencies in his/her job profile.
- 1.3 The Capability procedure is designed to help and encourage all employees to achieve and maintain an acceptable standard of employment. It provides a framework for dealing with alleged failures to achieve the required work standards in an equitable, supportive and consistent manner.

2. Equalities Statement

- 2.1 This school/Academy is committed to providing equal opportunities and access to all. This policy statement embraces the spirit of managing a diverse workforce. Those managing the process of performance in the workplace must ensure that no employee is discriminated against either directly or indirectly, or victimized, on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment.

3. Scope

- 3.1 This procedure applies to all permanent and temporary teaching and support staff (including the Headteacher and Deputy Headteachers). The procedure also applies to all centrally employed teachers (i.e. within the Local Authority) and all staff employed at short stay schools (previous known as Pupil Referral Units).
- 3.2
- 3.3 Whilst this procedure relates equally to centrally employed teachers, the role of the school governing body will be taken by the Director of Children & Adults, Learning & Caring, or Assistant Director delegated by the Director. The role of Headteacher will be taken by a designated manager.

4. Principles

- 4.1 Through the induction process, Headteachers, line managers and supervisors will ensure that all staff are made aware of this procedure and have a clear

understanding of the acceptable standard of performance applicable to them, both in their particular setting and in the wider context of the school.

- 4.2 This school/Academy is committed to ensuring that employees are trained, supported, well -motivated and well-managed. The school's aim is for employees to excel and be successful. There is an opportunity to discuss performance and training/development opportunities at least annually at appraisals and on a more frequent basis as part of day-to-day management and supervision.
- 4.3 This school/Academy aims to create an environment in which successful performance is encouraged and made possible. This is achieved by carrying out good recruitment, management and employee development practices that motivate employees and actively support employees in their work.
- 4.4 Preference should be given as far as possible to resolving capability issues as part of regular day-to-day management and supervision. However, if this approach fails to bring the standard of work to an acceptable level, recourse will be made to the formal procedure.
- 4.5 This procedure does not apply to matters of poor performance caused by wilful misconduct which should be dealt with under the school's Disciplinary policy.
- 4.6 This procedure is not appropriate in cases of sickness absence or sub-standard work performance resulting from ill-health. In such cases, the Managing Absence Procedure should initially be used. The Headteacher or line manager will explore whether inadequate performance is linked to a disability issue. In these circumstances the procedure should not be applied before appropriate actions have been undertaken e.g. reasonable adjustments.
- 4.7 The Headteacher or line manager is responsible for sensitively managing the process. *For clarity within this policy, the Headteacher/delegated manager's role may be referred to as the 'Line Manager'.*
- 4.8 In the case of capability of a Headteacher the responsibility lies with the Chair of Governors (or another nominated Governor).
- 4.9 If the school has delegated to the Headteacher the authority to make the initial dismissal decision, it will be more appropriate, where possible, for another member of the senior management team to manage the process.
- 4.10 Information relating to Capability proceedings will be kept confidential.
- 4.11 In most cases an employee should not be dismissed because of a failure to perform to the required standard unless warnings of the consequences and an opportunity to improve have been given. However, where an employee commits a single significant error, or a number of substantial errors which are attributable to incompetence or inability to meet the required standards of the job and the actual or potential consequences of that error are, or could be, extremely serious, warnings may not be

appropriate and the case could go straight to a Stage 3 Hearing.

- 4.12 Whilst every endeavour will be made to comply with timescales indicated within this policy, due to the complexity and or specific circumstances of a case, timescales may need to be varied. As a general guide performance monitoring periods should normally be at least 4 weeks but no longer than 8 weeks. Timescales for meetings may be varied by mutual agreement (please refer to Sections 10.0, 14.0, and 17.0 for more detail on timescales).
- 4.13 If the cause of poor performance proves to be a work-related matter outside the control of the individual, the school will seek to address the root cause of the problem outside of the Capability Procedure.
- 4.14 At each stage in the procedure, an employee will be told about the performance problem and will be given an opportunity to state his or her case before any action is taken. The employee has a right to be accompanied by a trade union representative or by a workplace colleague at formal stages of the capability procedure (hereafter referred to as the representative). The employee will receive written notification of the informal/formal meeting.
- 4.15 The procedure can be started at any stage, dependent upon the extent, or seriousness of the poor performance. It is not necessary to progress through all stages of the procedure before an employee can be dismissed.
- 4.16 An employee subject to the capability procedure may find the situation stressful, and the school should make the employee aware of any emotional support services such as Carefirst which is *available to LA Maintained Schools and Academies through Medway HR Services. When adopting this policy, if the school does not buy into the Carefirst Employee Assistance Programme (EAP) package, schools will need to delete references to the Carefirst EAP service or substitute details of their own EAP provider, as appropriate*).the confidential counselling service available as follows: - Care first – Tel: 0800 174 319 or www.care-first.co.uk*
Managers may also wish to point out to staff that if they are a member of a trade union, they have access to the union for advice on these processes.

NB: In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the Headteacher, to one or more governors, or to one or more governors acting with the Headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

5. Roles and Responsibilities

5.1 Employee Responsibilities

- To take personal responsibility for their own performance and behaviour.
- To perform in line with the school's values and behaviours as well as any skills or professional standards taking into account agreed personal development needs.
- To contribute to 1:1 meetings and to engage in objective setting, problem solving, review and evaluation.
- To work with managers constructively to address any underlying issues which may be affecting the employee's performance.
- To move forward their learning and development by taking joint ownership for their personal development.
- To be open to constructive feedback.

5.2 Line Manager Responsibilities

- To ensure that all staff reports are clear about their roles and responsibilities within their job and the standards of performance required of them.
- To ensure that employees are given the required training and instruction to be able to effectively carry out their role.
- To deal with capability issues promptly and in a supportive and constructive way and deal with sensitively potential staff welfare issues.
- To monitor and support the performance of employees through both formal processes (such as appraisals) and more informal processes (e.g. one to one meetings).
- To ensure that all staff reports are familiar with this Capability Procedure.

5.3 HR Services Responsibilities

- To provide advice to line managers on matters relating to performance and in the implementation of this procedure.
- To advise and support line managers through all stages of the procedure including if/when suspension is being considered.
- To advise the Chairperson and panel of governors of the Panel at Stage 3 Capability Hearings and at Appeal Hearings.
- To advise on the content and timing of letters.

6. Identifying Poor Performance

6.1 Unsatisfactory work performance can become apparent in a number of ways. This may include:

- Poor standards of work, e.g. frequent mistakes, not following a job through, unable to cope with instructions given;
- Inability to cope with a reasonable volume of work to a satisfactory standard;
- Lack of apparent skill/method of work required; or
- Through the management process where an employee is consistently not achieving agreed and realistic set targets/objectives

- Through teacher standard monitoring – e.g. lesson observations, book scrutiny.
- 6.2 If an employee's performance fails to meet the required standards through their own carelessness, negligence, uncooperativeness or idleness, this should be dealt with in accordance with the School's Disciplinary Procedure. The employee must be clearly informed which procedure is being applied to them.

7. Grievances Raised During the Capability Process

- 7.1 The capability procedure shall not be affected or interrupted by the employee invoking the grievance procedure. Any grievance raised during the course of these proceedings, that relates to action being considered or taken in respect of capability, will be dealt with as part of a Capability or Appeal hearing as appropriate.

8. Policy Stages

- 8.1 The Capability policy contains the following stages:
- Informal Stage – Informing the employee of concerns and setting improvement targets (potential to escalate to Stage 1).
 - Formal Stage - Stage 1 Capability Process (potential to escalate to Stage 2).
 - Formal Stage - Stage 2 Capability Process (potential to escalate to Stage 3)
 - Formal Stage - Stage 3 Capability Process (potential for dismissal with pay in lieu of notice or in exceptional circumstances - alternatives to dismissal).

9. Ill-Health / Disability

- 9.1 Line managers in conjunction with a member of the Schools HR team, should consider whether an employee may be considered to have a disability under the Equality Act 2010, and if so whether 'reasonable adjustments' might permit retention in the job, or in another job.
- 9.2 If ill health or a disability is affecting an individual's performance the employee should be referred to Occupational Health so that advice can be sought regarding reasonable workplace adjustments. If an employee refuses to consent to an Occupational Health referral, any future decisions, which the school makes, regarding the employee's performance/capability, will be based on the evidence and knowledge at its disposal.

10. Informal Action

- 10.1 In the first instance it is usually appropriate for the employee's deficiencies to be discussed with him/her as part of the normal supervisory arrangements and in a constructive manner. With specific information about the employee's unsatisfactory work performance, the line manager should meet the employee and attempt to resolve the problem. The line manager should give the employee the opportunity to explain his/her view of his/her performance.

- 10.2 The line manager and employee should discuss training and support provision and agree any further training and development requirements for the employee to have the required skills and experience to perform the duties of the post. The completion of any training/development must be treated as a work instruction. The manager and employee should also if appropriate, discuss making reasonable adjustments to the duties of the post where considered appropriate in cases of disability. Following this, realistic targets and monitoring arrangements should be agreed and confirmed in writing to enable the employee to have the opportunity to achieve the required standard. This may include interim performance targets during training and more detailed targets after the completion of training. A letter to the employee must make it clear that the employee is in the informal stage of the capability procedure. A member of Human Resources and a Trade Union representative may be part of this meeting setting the written performance improvement plan, if the line manager considers this will be helpful to the process.
- 10.3 A written performance improvement plan should be shared with the employee, clearly stating what training/support will be provided and by whom, including review periods. The agreed plan should be signed by both the manager and the employee and kept on the employee's file.
- 10.4 The manager must advise the employee both verbally and in writing that their performance will be monitored over an agreed period of a maximum of 8 weeks.
- 10.5 At the end of the monitoring period, the manager will undertake an evaluation of the employee's performance and record the results. The performance of the employee must be objectively monitored and assessed, and feedback given to the employee during an informal review meeting.
- 10.6 At the informal review meeting, the manager will decide whether to:
- Take no further action as the employee has met the required standards and inform the employee accordingly; or
 - Arrange for further monitoring and support to correct the situation if the employee's performance has improved and has almost met the standards;
 - Invoke Stage 1 of the formal Capability Procedure. **This procedure will enable the Stage 1 formal meeting to follow on from the informal review meeting if previous agreement has been sought by all parties in advance;** or
 - Arrange to hear the matter under the Disciplinary Procedure because the poor performance appears to be due to conduct rather than lack of skill or aptitude.
- 10.7 Notes of meetings must be kept by the manager and a copy given to the employee. If this informal approach fails to bring the level of improvement back to an acceptable standard then the formal procedure should commence. A member of Human Resources and a representative are entitled to be present at the informal review meeting.

11. Operating the Formal Procedure

11.1 Invoking the Procedure

In general, the procedure will not be invoked unless:

- Informal action has proved ineffective; or
- Serious or gross incompetence is under consideration

11.2 Principles that will apply

- 11.3 With the exception of any informal action being taken, the employee will be given reasonable notice (no less than 5 working days, unless by agreement) to attend any formal review meetings. At each stage of the formal capability process the employee will be entitled to be accompanied by a Trade Union representative or workplace colleague.
- 11.4 An employee or representative who cannot attend a meeting because of illness or other unforeseen circumstances should notify the line manager at the earliest opportunity and give full reasons. The meeting may be rearranged but if the employee or representative fails to attend a second time then the meeting may proceed in their absence. The reasons for non-attendance and for proceeding will be recorded.

12. Suspension

- 12.1 Suspension is rarely an appropriate measure for an employee whose performance at work is considered unsatisfactory. The Headteacher may suspend an employee where it is believed that an act of gross incompetence has occurred but must seek advice from HR Schools first.
- 12.2 Suspension, with full pay, will be used for as short a period as possible and is not a penalty for poor performance. It is a decision which may be exercised in a particular case where management consider that the employee should not remain at work.
- 12.3 In this context, full pay shall be the employee's normal pay.
- 12.4 Where an employee is suspended from work, the Headteacher must send a confirmation letter to the employee within 5 working days of the suspension. The suspension letter should give the reasons for the suspension and set out any special terms and conditions relating to the suspension. A copy of the suspension letter should be sent to HR Schools.

13. Stage 1 Capability Meeting

- 13.1 The employee will be given 5 working days' notice of any formal meetings under this procedure. This notice will include a reminder about the employee's right of representation. No deferment of this date will be granted. With previous agreement the Stage 1 Capability meeting will follow on from the informal review meeting.

13.2 At the meeting the manager should:

- Identify clearly and fairly the ways in which the employee is under-performing providing examples as appropriate.
- Explore with the employee what may be the possible causes for the shortfall in performance.
- Reconfirm the standards of performance, which are expected.
- Explore the support which has already been provided to date and agree what other help and support may be reasonably provided to the employee to improve their performance.
- Set clear Specific, Measurable, Achievable, Realistic, and Time (S.M.A.R.T.) targets or objectives for the employee to achieve.
- Confirm to the employee the steps within the Capability procedure if the required performance standards are not achieved.
- Set a date for a formal Stage 1 Outcome Review Meeting (normally a minimum of 4 weeks and a maximum of 8 weeks' time) to review the employee's progress against the agreed performance improvement objectives/targets.

13.3 At the end of the meeting, both parties should have a clear, agreed understanding of the performance issues causing concern, the levels of support to be put in place, the targets set and the periods set for review.

13.4 A letter confirming that the employee is being managed under Stage 1 of the Capability procedure will be issued to the employee by the line manager, following the meeting. The letter will include copies of the file note of the meeting; the agreed performance improvement plan, any support actions agreed and the potential consequences of failure to achieve a significant and sustained improvement within the agreed time period. The letter will normally include the pre-agreed date and time for the Stage 1 Outcome Review Meeting.

14. Stage 1 Monitoring Period

14.1 The employee's subsequent performance should be monitored on a regular and open basis during the monitoring period by the appropriate line manager.

14.2 It is recommended that regular (e.g. weekly or fortnightly) meetings take place between the manager and the employee as a supportive approach. At each monitoring meeting, the employee must be given a clear indication of their progress to date, and any interim timescales for improvement must fit into the overall performance improvement targets agreed at the Stage 1 Capability Meeting. Positive feedback must be given where appropriate in writing.

14.3 If any employee experiences any unforeseen difficulties during the review period, they should immediately contact the line manager to discuss these issues rather than waiting until the review meeting.

15. Stage 1 Outcome Meeting

- 15.1 Following the performance monitoring period, the employee will meet formally with the line manager to review progress against the performance improvement targets which were set at the Stage 1 Capability Meeting.
- 15.2 If for any reason the date for the Stage 1 Outcome Meeting was not set at the previous Stage 1 Capability Meeting, then the manager will need to write to the employee, normally giving 5 working days' notice, of the requirement to attend a Stage 1 Outcome Meeting. This notice will include a reminder about the employee's right of representation at the meeting.
- 15.3 At the Stage 1 Outcome Meeting, the line manager will discuss with the employee the overall progress against each of the agreed targets/objectives. This should be a wide-ranging discussion during which the employee will be given the opportunity to make any representations and put forward any concerns or mitigation. The manager will consider the employee's views prior to determining the outcome of the Stage 1 Monitoring Period.
- 15.4 If at the end of the review period the required improvement has been made, this will be confirmed to the employee verbally at the meeting. The manager will also confirm that the improved level of performance must be maintained for at least 12 months and any subsequent lapse in performance may lead to action under the Capability Procedure being resumed without starting afresh. A letter will be issued by the manager confirming the outcome.
- 15.5 If some improvement has been made but the standards have not yet been fully met, the manager may extend the current review period for a maximum period of 4 working weeks. The employee should be reminded of the potential consequences of failure to achieve a significant and sustained improvement. A new Review Meeting will be arranged for the end of the extended period to review progress.
- 15.6 A letter will be issued by the manager confirming the outcome and the potential for dismissal of failing to achieve the required performance standards.
- 15.7 If the conclusion of Stage 1 is that the employee's performance has not sufficiently improved and there is still clear evidence of incapability, it should be made clear to the employee that Stage 2 of the Capability Process will now be invoked.
- 15.8 A letter confirming the outcome of the Stage 1 Capability Process will be issued to the employee by the line manager, following the meeting. The letter will include copies of the file note of the meeting; the agreed performance improvement plan, any support actions agreed and the potential for dismissal of failure to achieve a significant and sustained improvement within the agreed time period.

16. Stage 2 Capability Meeting

- 16.1 The Stage 2 Capability process will be commenced if the employee has not achieved the required performance standards in Stage 1, or if the impact of poor performance

is serious enough to warrant entry into the procedure at this stage. The process for Stage 2 will follow a similar pattern to Stage 1.

16.2 The employee will be given 5 working days' notice, of the Stage 2 Capability Meeting, **unless it is agreed with the employee that the Stage 2 Capability Meeting will be a direct continuation from the Stage 1 Outcome Review Meeting.**

16.3 As an essential part of the Stage 2 Capability Meeting, consideration will be given to the nature of any further support which may be appropriate for the employee in the circumstances including additional training, or access to other relevant schools services including Occupational Health.

16.4 At the meeting the line manager should discuss:

- Identify clearly and fairly the ways in which the employee is under-performing providing examples as appropriate.
- Explore with the employee what may be the possible causes for the shortfall in performance.
- Reconfirm the standards of performance, which are expected.
- Evaluate the training and support which has been provided to date and investigate what other support may be reasonably provided to the employee to improve their performance.
- Set clear (S.M.A.R.T.) targets or objectives for the employee to achieve.
- Confirm to the employee the subsequent steps within the Capability Procedure if the required performance standards are not achieved within the set timescales.
- Set a date for a formal Stage 2 Outcome Review Meeting (minimum of 4 weeks and a maximum of 8 weeks time) to review the employee's progress against the agreed performance improvement objectives/targets.

16.5 At the end of the meeting, both parties should have a clear, agreed understanding of the performance issues causing concern, the levels of support to be put in place, the targets that have been set for them and the periods set for review.

16.6 A letter confirming that the employee is being managed under Stage 2 of the Capability procedure will be issued to the employee following the meeting. The letter will include copies of the file note of the meeting; the agreed performance improvement plan, any support actions agreed and the potential for dismissal of failure to achieve a significant and sustained improvement within the agreed time period. The letter will include the details of the date and time for the Stage 2 Outcome Review Meeting.

17. Stage 2 Monitoring Period

17.1 The employee's subsequent performance should be monitored on a regular and open basis during the Stage 2 monitoring period. It is recommended that fortnightly meetings take place between the line manager and the employee.

17.2 At each monitoring meeting, the employee must be given a clear indication of their progress to date, and any interim timescales for improvement must fit into the overall

performance improvement targets agreed at the Stage 2 Capability Meeting. Positive feedback must be given where appropriate in writing.

18. Stage 2 Outcome Review Meeting

- 18.1 Following the performance monitoring period, the employee will meet formally with the line manager to review progress against the performance improvement plan. If for any reason the date for the Stage 2 Outcome Meeting was not agreed during the previous Stage 2 Capability Meeting, then the line manager will need to write to the employee, normally giving 5 working days' notice, of the requirement to attend a Stage 2 Outcome Meeting. This notice will include a reminder about the employee's right of representation.
- 18.2 At the Stage 2 Outcome Meeting, the line manager will discuss with the employee the overall progress against the agreed performance targets. This should be a wide-ranging discussion during which the employee will be given the opportunity to make any representations and put forward any concerns or mitigation. The line manager will consider the employee's views prior to determining the outcome of the Stage 2 Monitoring Period.
- 18.3 If at the end of the review period the required improvement has been made, this will be confirmed to the employee verbally at the meeting. The line manager will also confirm that the improved level of performance must be maintained for at least 18 months and any subsequent lapse in performance may lead to action under the Capability Procedure being resumed without starting afresh. A letter will be issued by the manager confirming the outcome.
- 18.4 If the conclusion of Stage 2 is that the employee's performance has not sufficiently improved and there is still clear evidence of incapability, the employee will be notified by the line manager that a Stage 3 Capability Hearing will now be convened, and that dismissal is one of the possible outcomes from this Stage 3 Capability Hearing.
- 18.5 A letter confirming the outcome of the Stage 2 process will be sent to the employee by the line manager. The letter will include a copy of the file note from the Stage 2 Outcome Meeting.

19. Stage 3 Capability Hearing

- 19.1 If the employee's performance has not reached the required standard during Stage 2 of the Capability process, or where serious performance issues arise, or gross negligence is alleged (and after such investigation as is appropriate in the circumstances), the employee shall be invited to a Stage 3 Capability Hearing.
- 19.2 The Stage 3 Capability Hearing will take the form of a formal hearing conducted by a Panel of Governors. (unless the Headteacher has the delegated authority to consider dismissal and has not been involved in the line management of the employee during previous stages of the Capability procedure, in which case the Headteacher may hear the case instead of a panel of Governors). A HR Schools Consultant will support the Panel of Governors/Headteacher at the hearing.

- 19.3 A letter will be sent to the employee, normally 10 working days before a Stage 3 Capability Hearing, or a shorter period as may be mutually agreed, detailing the purpose of the Hearing, and the circumstances that have led the school to consider dismissing the employee on the grounds of incapability as well as their right to representation at the hearing..
- 19.4 Any papers which either the employee or the presenting management intend to rely on as evidence at the Hearing must be sent to the School (FAO the Panel of Governors/Clerk to Governors/Headteacher) at least 5 working days in advance of the Hearing date.

20. Format of a Stage 3 Capability Hearing

- 20.1 The purpose of the Stage 3 Capability Hearing is for the Panel/Headteacher is to listen to the management case and to the employee case and to decide what action to take. It is important to bear in mind that the degree of proof is on the balance of probability that there is reasonable belief that the performance of the employee is unacceptable and has not shown the required improvement to reach a satisfactory level.
- 20.2 The Panel/Headteacher should consider any mitigating circumstances when considering the case.
- 20.3 At the hearing each side will be entitled to present their case and call witnesses (if appropriate). Each side will be able to ask questions and comment on the case presented by the other side. A procedure to be followed at a Stage 3 Capability Hearing can be found at Appendix 1.
- 20.4 Non verbatim notes of the hearing will be taken by an experienced note-taker provided by the school. A copy of the typed notes will be sent to the employee and his/her representative.

21. Outcome of Stage 3 Capability Hearing

- 21.1 Having listened to both parties present their case, the Panel will adjourn the capability hearing to consider the matter. Outcome options available for the Panel to determine include:
- Confirm that sufficient improvement has occurred which may include recommendations on further support or guidance required; or
 - Confirm an extension of Stage 2 of the Capability process with the option of moving to a new Stage 3 Capability Hearing if no further improvement of performance is achieved within set timescales.
 - Dismiss the employee with notice (except in an exceptional case, i.e. gross incompetence, which would be a summary dismissal without notice).
- 21.2 The outcome of the Capability Hearing will be confirmed to the employee in writing, within 5 working days, and will include the employee's right of appeal.

21.3 If the employee is dismissed and given contractual notice on full pay, the employee should be told not to attend work during the notice period.

22. Action against a Trade Union Official

22.1 Although normal capability standards apply to the performance of trade union officials who are employees of the school, no action under the formal procedure should be taken until the circumstances of the case have been discussed with a more senior trade union representative or full time official.

22.2 In cases of alleged gross incompetence against a recognised trade union official and where a full time union official cannot be quickly contacted, the recognised trade union official may be suspended on full pay until the full time union official has been contacted and further action agreed.

23. Non-Attendance at a Stage 3 Capability Hearing

23.1 If either the employee or their representative is unable to attend a meeting on the date of the Capability Hearing due to sickness or another substantial and valid reason, the meeting may be postponed and normally rearranged for within 10 working days of the original meeting date.

23.2 If the employee is unable to attend this second re-arranged meeting, the meeting will be held in the employee's absence. However employees will have the option of requesting that their representative be allowed to present the case in their absence or to present any evidence in writing.

24. Appeals against Dismissal

24.1 Employees are entitled to appeal to a Governor Appeal Panel in cases of dismissal.

24.2 The appeal must be made in writing, addressed to the Chair of Governors at the School, stating the grounds for the appeal, within 5 working days of being advised in writing of the decision of the Level 3 Capability Hearing.

24.3 The grounds of an appeal will normally be based on one or more of the following:

- that the penalty is unfair / inconsistent under the circumstances (judgment);
- new evidence has arisen which was not considered at the original meeting and which may have a bearing on the outcome (facts);
- that the policy and procedure has not been followed correctly (process).

24.4 The appellant will be notified in writing of the time, date and venue of the appeal meeting, giving at least 10 working days' notice and informed of their right to be represented at the hearing. Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal.

- 24.5 The Chairperson of the Stage 3 Capability Hearing and the HR Schools Consultant who advised the Chairperson will present the management's case at the appeal meeting.
- 24.6 A copy of the papers relevant to the capability appeal shall be made available to the Appeals Panel normally at least 7 working days in advance of the meeting. The circulation of the papers will be arranged by the school.
- 24.7 The format of the appeal meeting will be in accordance with the appeal hearing format outlined in Appendix 2.
- 24.8 As an appeal is against the decision reached by the Chairperson based upon evidence presented at the Stage 3 Capability Hearing New evidence that is material to the case may be submitted and must be clearly identified and each party must be given an opportunity to comment on it prior to the appeal meeting.
- 24.9 The appeals panel may conclude to:
- Uphold the original finding and the decision to dismiss;
 - Not uphold the finding and therefore reinstate the employee.
- 24.10 The Schools HR Consultant will fully appraise the Appeals Panel of the merits and any potential risks of the options available to them.
- 24.11 The employee will be informed of the decision of the appeals panel in writing, the panel will set out the reasons for its decision within 5 working days. The decision of the Appeals Panel shall be final. No further right of appeal exists within the school's Procedure.

25. Monitoring and Review

- 25.1 This procedure will be reviewed periodically to ensure compliance with changes in employment law and equality and diversity legislation.

Appendix 1 - Level 3 Capability Hearing - Format

The Stage 3 Capability Hearing will be conducted by a panel of governors (or by the Headteacher if the Governing Body has delegated the power to dismiss; and if the Headteacher has not been involved with the case to date), who will be supported by a HR Schools Consultant.

The Chair of the panel will explain the procedure to be followed. The format of the hearing will be as follows:

- A. The school's management representative(s) will explain in detail all of the steps that have been taken so far, to help support the employee in achieving the required performance standards, bringing forward any witnesses to help support the case, if required.
- B. The employee and/or the employee's representative may cross-question the school's representative and any witnesses and examine any documentary evidence submitted.
- C. The employee and/or the employee's representative may present their evidence, including any mitigation, and call witnesses in support of their case.
- D. The school's representative may cross-question the employee, the employee's representative and any witnesses.
- E. The Panel of Governors and the HR Schools Consultant may question management representative(s), the employee, the employee's representative and any witnesses.
- F. Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- G. The school's representative and the employee or the employee's representative will have the opportunity to sum up their cases if they so wish.
- H. When the Panel of Governors and the HR Schools Consultant are satisfied that all the relevant facts have been obtained, they will, in private, consider this evidence, any mitigating circumstances prior to deciding what action is appropriate.
- I. An adjournment may be approved by the Chair of the Panel, if necessary, to obtain further information.
- J. Wherever possible the decision will be notified to the employee and the employee's representative verbally on the day of the hearing and confirmed in writing within 5 working days.

Appendix 2 – Appeals Procedure

The Chair of the Appeals Panel will conduct the appeal hearing and will explain the purpose of the hearing, outline the procedure to be followed and the powers vested in the Appeals Panel.

- A. The employee (also known as the appellant) has the right to be represented by a Trade Union representative or workplace colleague and may call witnesses and refer to documents.
- B. The employee (or representative) will put the appellant's case in the presence of the schools representative(s) and may call such witnesses as required.
- C. The schools representative(s) will have the opportunity to ask questions of the appellant and witnesses who have been called on the evidence.
- D. The members of the Appeals Panel will have the opportunity to ask questions of the employee and witnesses and call such witnesses as required.
- E. The schools representative(s) will put the case in the presence of the employee and representative and may call witnesses as required.
- F. The employee or representative will have the opportunity to ask questions of the schools representative(s) and any witnesses who have been called on the evidence.
- G. The members of the Appeals Panel will have the opportunity to ask questions of the schools representative(s) and call such witnesses as required.
- H. Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- I. The employee (or representative) and the schools representative(s) will have the opportunity to sum up their cases if they so wish.
- J. The schools representative(s) and the employee (and representative) will then withdraw.
- K. The Appeals Panel will deliberate in private.
- L. Wherever possible the decision will be notified to the employee and the representative verbally on the day of the hearing and confirmed in writing within 5 working days.