



LORDSHIP LANE
PRIMARY SCHOOL

Capability Policy and Procedures

Statutory or non-statutory	Haringey Policy adapted for LLPS	Date reviewed	Date of next review
Statutory	Yes	Summer 2026	Summer 2027

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APPENDIX 1- ORDER OF PROCEEDINGS – CAPABILITY HEARING

1. PURPOSE

- 1.1** Head Teachers and Governing Bodies aim to foster and maintain a culture in which staff are encouraged and empowered to manage and improve their own performance and results. Managers support employees by providing clarity on the performance standards expected, and training and developing their people to assist them in achieving these required standards.
- 1.2** Managing performance is an on-going process - it operates as a continuous cycle. This policy is a means of encouraging improvement in under or poor performance. Informal approaches to manage any capability issues are always encouraged first, before referral to the formal Capability Procedure. This includes identifying whether further training, support, coaching, more tools/resources, improved communication or working relationships may resolve the capability issues.

2. SCOPE

- 2.1** This policy and procedure is applicable to all employees excluding those on fixed term contracts of less than one term and Early Careers Teachers (ECTs) serving a statutory induction period, (except in cases where there is a likelihood that the teacher will not satisfactorily complete induction and the underperformance is so serious that it could result in the ECT being dismissed before the end of the induction period).

For Teachers Experiencing Difficulty, the Transition process in the Appraisal Policy will normally apply first, however there may be cases where formal capability proceedings will commence where it is considered appropriate due to the seriousness of the concerns.

For support staff in schools, this policy applies following completion of a probationary period. Should a support staff employee be underperforming in their role during their probationary period, the support staff Probationary Policy should be referred to.

- 2.2** "Working days" are defined as weekdays (Monday-Friday), excluding bank holidays and statutory holidays, regardless of the actual days worked by any employee.
- 2.3** The performance of all employees will be monitored through regular 1 to 1 or supervision meetings and discussions on an on-going basis and will be reviewed as part of the Induction and/or Appraisal Process.
- 2.4** Head Teachers and managers are committed to supporting the development and improvement of individual performance to contribute to the school's objectives.
- 2.5** This policy and procedure are to be used where an employee's performance falls short of expected standards.
- 2.6** When dealing with an employee's under or poor performance, the manager will:
- allow sufficient time for improvements in performance;
 - consider training and support, and additional guidance.
- 2.3** If it is the Head Teacher's capability which is the cause for concern, the Chair of Governors or the Executive Head Teacher (where there is one) will undertake the role as defined within this policy and procedure for the Head Teacher/Manager. Governors are advised to consult their HR support.

2.4 When determining whether an employee is under-performing, managers will take into account any reasonable adjustments required under the Equality Act 2010 and/or any agreed programme of training/support. Managers will also take into account any other factors that may be impacting on an employee's performance.

2.5 Should an underlying medical condition(s) be identified and confirmed as potentially having an impact upon the employee's performance, an Occupational Health referral may be carried out, and/or referral to other appropriate employee assistance and support services. Management will aim to support the employee with any reasonable adjustments, or consideration for redeployment on medical grounds, as recommended by Occupational Health and where this is possible. Where an employee declines a referral to Occupational Health, the Head Teacher/manager should explain that without such a report, management decisions will be made using the information available.

2.6 This procedure is not applicable to:

- Concerns about poor attendance as a result of ill-health absence;
- Concerns about an individual's conduct, rather than competence;
- Instances of very serious error, omission or negligence which the Governing Body and/or local authority could not risk occurring again.

In these circumstances the absence management or disciplinary procedures will apply as appropriate.

2.7 The capability procedure will be applied fairly and consistently to all school staff regardless of gender, race, colour, national or ethnic origin, nationality, marital/civil partnership status, disability, sexual orientation, gender reassignment, age, religion, pregnancy/maternity, trade union membership/non membership, duration of contract (permanent/temporary/fixed-term status) or number of hours worked.

3. CONFIDENTIALITY

3.1 Any documents relating to capability issues must be stored confidentially for a period of 6 years and then destroyed. The emphasis should be on protecting the employer and the employee. All parties involved in a capability matter are obliged to maintain confidentiality.

4. ROLES AND RESPONSIBILITIES

4.1 The role of Governors

4.1.1 Should ensure that there is a capability policy in their school and that employees are aware of how to access it.

4.1.2 Governors should not normally be involved with the capability procedure before an appeal hearing following the dismissal of an individual. Where it is the Head Teacher's capability that is in question the Chair of Governors or another appropriate governor or Executive Headteacher (where one exist) will assume the role of the manager.

4.1.3 Where dismissal is being considered the Headteacher should make recommendation to the governing body. A governing body sub-committee of usually 3 people should meet to discuss the recommendation. The employee will

be invited to attend with a trade union representative or a work colleague of their choice.

4.2 The role of Employees

- 4.2.1 All employees are expected to understand the nature of their roles and duties set out in their job descriptions.
- 4.2.2 Teachers are expected to adhere to the professional duties set out in the School Teachers Pay and Conditions Document (STPCD) and in the Teachers' Standards.
- 4.2.3 Support staff are expected to carry out the duties set out in their job description and classroom-based support staff should also adhere to the Professional Standards for Teaching Assistants and for Higher Level Teaching Assistants.

4.3 The role of Headteachers/managers

- 4.3.1 Headteachers/managers should ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis in order that it remains relevant and employees know what is expected of them, and that relevant school policies and other information are available and drawn to employees' attention.
- 4.3.2 To address identified concerns or issues promptly. Some causes of concerns may include:
 - where the knowledge and technical skills required for the post are changing but the employee does not possess the new skills and knowledge required despite opportunities to acquire them.
 - where circumstances outside the school are affecting the employee's work performance.
 - where circumstances within the school environment – for example redeployment or new or additional responsibility or perceived inadequate management support or unreasonable demands – are affecting the employee's work performance.

Whenever perceived lapses from acceptable standards of work performance arise, either through the appraisal process or otherwise, they should initially be discussed with the employee concerned by their immediate line manager.

4.4 The role of the Council

The Council has advisory rights as regards all proceedings of a Governing Body of all community, voluntary controlled, community special and maintained nursery schools where potentially a dismissal may take place. This will normally be done through the school's HR provider in consultation with the Council's Schools HR Team. This also applies to foundation, voluntary aided, and foundation special schools where the Governing Body have accorded the authority those rights of attendance and giving advice.

5. INFORMAL APPROACH/ INDIVIDUAL EXPERIENCING DIFFICULTY

- 5.1.1** Where a Head Teacher/manager is concerned about an employee's work performance, the Head Teacher/ manager will discuss the issues with the employee as soon as possible as part of their normal day-to-day management role. This will happen as part of normal supervision or 1 to 1 meetings. Discussions about an employee's under-performance will be conducted in an appropriately supportive manner and will normally involve the employee and their Head Teacher/manager only. However, in the case of teaching staff, it may be appropriate for the Head Teacher/manager to seek appropriate educational specialist support, for example, the school's education improvement officer or appropriate consultant.
- 5.1.2** The Head Teacher/manager will ensure the employee understands the purpose of these discussions, and, where under performance is identified, the possible next steps if performance does not improve. This can include, but is not limited to, invoking the capability procedure. The Head Teacher/manager will explain the aspects of the employee's performance that they feel the employee needs to improve upon. The employee's views on their own performance should be taken into account and efforts will be made by the manager at all stages to understand the problems being experienced and the reasons for them.
- 5.1.3** The Head Teacher/manager and employee will discuss what support or training is necessary in helping the employee to improve. The manager will allow a fair and realistic time period to enable the employee to improve to a satisfactory standard. The length of time will depend on the nature of the under- performance and any support in place.
- 5.1.4** The main points of discussions will be documented by the manager, shared with the employee and retained on the employee's file, and a copy provided to the employee.

5.2 Early Careers Teacher (ECT) Induction

- 5.2.1** ECT's are not covered by the appraisal process whilst within the ECT Induction period. Therefore, if it becomes apparent that an ECT is not making satisfactory progress, the Head Teacher/manager will ensure that additional monitoring and support is provided. Managers will not wait for formal assessment meetings to put this support in place. ECT's will be made fully aware of the areas of their practice where improvements are required and will be given every opportunity to improve.

5.3 Transition Meeting

- 5.3.1** If the outcome of a teacher/individual experiencing difficulty process, or any additional support provided through an ECT Induction, is that unsatisfactory improvement to performance has been made, the individual will be invited to a transition meeting.
- 5.3.2** The individual will be provided with at least 5 working days' written notice of this meeting, being fully advised of the purpose and matters to be discussed, and of their right to be accompanied by a trade union representative or a colleague of their choice.
- 5.3.3** Further detail of the Teacher/Individual Experiencing Difficulties process, and Transition meetings, is contained within the Teacher Appraisal Policy. q

6. FORMAL PROCEDURE

6.1 If the employee's performance does not improve to the required standard following informal approach, Head Teacher/manager may move to the formal capability procedure. During the capability procedure, the Head Teacher/manager will provide the necessary advice, coaching, guidance and support in addition to developing a Performance Improvement Plan in order to assist the individual in attaining and maintaining the required standards of performance.

6.2 STAGE 1- Preparing for the Meeting

6.2.1 The head teacher (or another senior manager, as appropriate) will arrange a stage one meeting under the capability procedure, giving the employee at least **5 working days'** notice in writing. Where possible, the employee should be given a say in the date and time of the meeting. If either the teacher or his/her trade union rep/work colleague cannot attend on the date or at the time notified, an alternative date and time should be negotiated with all parties involved as long as this is reasonable and is ideally not more than **five working days** after the original date.

6.2.2 The written notice should give the following information to the employee:

- The evidence of unsatisfactory performance (i.e. which of the standards that is expected of the employee that are not being met)
- Sufficient information regarding the concerns about performance
- A copy of the Appraisal Transition Stage Action Plan (where applicable) detailing the support that has been provided;
- The date, time and location of the meeting, and the names of those who will be present;
- The possible consequences for the employee in terms of the capability procedure;
- Copies of any written evidence which the manager intends to refer to at the meeting;
- Confirmation of the right to be accompanied by a trade union representative or work colleague of their choice and to state his/her case and present evidence at the meeting;
- A copy of the Capability Policy and Procedure.

6.2.3 Conducting the Meeting

The meeting should be conducted during the employee's normal working time in a quiet, uninterrupted location and a note-taker should be available. In order to establish whether or not action under the capability procedure is warranted, the Headteacher, Chair of Governors (for Head teacher capability meetings) or senior manager will conduct the meeting and will use it to:

- Identify which of the standards are not being met and explore the evidence provided.
- Give clear guidance on the improved standard of performance needed to enable the employee to be removed from the capability procedure.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed (the length of the review period will depend

upon the circumstances of the case, but it should be reasonable, proportionate and sufficient to enable improvement to take place, it should however, not be excessively long).

- Warn the employee concerned that failure to improve within the timeframe could lead to dismissal.
- Provide the employee and/or his/her representative with the opportunity to state their case and respond to the concerns raised including providing suggestions for specific or additional support.
- Establish any special circumstances which should be taken into account during decision-making.
- The meeting should be adjourned if new facts come to light which require further investigation or if a third party needs to be consulted.

6.2.4 After the Meeting

6.2.4.1 After the meeting the head teacher or senior manager (or governor(s) if the meeting concerns the capability of a Head teacher) will consider the evidence and discussion which took place and decide on an appropriate course of action. Where new information or the employee's explanation suggests that the matter is not as serious as it first seemed, the head teacher or senior manager or governor(s) may decide not to proceed with the capability procedure. In this instance, performance will continue to be monitored in accordance with normal management procedures.

6.2.4.2 Where a formal warning is deemed appropriate, the head teacher or senior manager or governor(s) will proceed to consider the level of warning, as follows:

- **First Written Warning:** Where concerns about performance are confirmed, the usual response will be to give the employee a first written warning. Continued unsatisfactory performance during the period the warning is 'live' (normally 12 months) would usually result in a final written warning being issued. A first written warning will invoke an initial assessment period of 6 weeks.
- **Final Written Warning:** In cases of particularly serious concern, where the lack of capability is so severe that an immediate improvement must be secured to ensure the safety and wellbeing of others, or where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, it is possible to move directly to a final written warning. HR advice will be sought when such an outcome is being considered. A further period of monitoring and support will usually be equivalent to 6 weeks; however, this may be shortened where there are serious concerns. A final written warning will usually remain 'live' for 12 months.

6.2.4.3 The employee should be notified of the decision, in writing within 5 working days of the meeting and be sent a copy of the notes of the meeting. The letter must clearly outline:

- What, if any, formal action is being taken, including an explanation of the decision;

- What improvements in performance are required and the consequences of a failure to improve;
- How long the warning (if any) will remain current;
- The right to appeal against any formal sanction by confirming this in writing to the Clerk to the Governing Body within **5** working days of receipt of the letter and outlining the grounds for appeal. (**See Section 12** for details of the Appeal Process)

6.2.4.4 In addition, the employee must be given an improvement plan for the assessment period, either at the same time as the letter, or shortly afterwards. This improvement plan will set out:

- The improvement required and the timescale for achieving this (including targets where appropriate)
- A review date.
- Details of any support, which should be commensurate with concerns, including any training or coaching that the employer will provide, how the support will be provided and the timescale for each strand of support;
- How performance will be monitored over the review period.

6.3 Review of Stage 1 Formal Capability

6.3.1 The Head Teacher/delegated senior leader will monitor the performance of the employee and provide feedback by holding a Capability Progress Review Meeting at the end of the monitoring period. The employee will be provided with a minimum of **5** working days' notice of this meeting and will be reminded of their right to be accompanied by their trade union representative or a colleague of their choice. Where the first Capability Meeting was held by a manager, the Head Teacher will also attend this meeting if it is felt that satisfactory improvement may not have been made and a further monitoring period may be set.

The discussion will include the following:

- a review of the monitoring period and support provided;
- a review of the progress against the performance improvement plan.

At this review, there are three possible outcomes:

- I.** Satisfactory improvement made and no further action required. Where the outcome is that satisfactory improvement has been made, and the targets reached, the employee will be advised that no further action will be required.
- II.** Significant improvement made, however, extension of review period required. The performance improvement plan should be revised to cover the improvements required and which targets remain for the extended review period.
- III.** Unsatisfactory review and a second monitoring period set.
 - The performance improvement plan will be revised to cover the improvements required and which targets remain for the second monitoring period;
 - Any further training and support that is required and can be provided;

- Consideration of any extenuating circumstances that may be affecting the employee's performance;
- Consideration of withholding an increment until the level of performance has reached the required standards;
- The employee will be advised that if the level of performance is not improved and maintained by the end of the review period it may result in a formal capability hearing, which could lead to dismissal on the grounds of capability.

In the case of outcome ii) or iii), the recommended timescale within which the employee should seek to improve their performance is the Head Teacher/manager's responsibility to set, and must be reasonable to allow the employee the opportunity to improve. As a recommendation, timescales should allow at least 1 month (4 working weeks) for improvements to be made. Following the meeting, the Performance Improvement Plan will be forwarded to the employee, and confirmation in writing will be provided of any actions and timescales agreed.

7. FORMAL CAPABILITY STAGE 2

7.1 At least 5 working days notice will be given of the meeting and the employee must be advised of their right to be accompanied. The contents of the invitation letter, documentation provided and the conduct of the meeting will be the same as the process at the stage one meeting. In the case of more serious concerns about performance emerging since Stage One, evidence of the matters causing such concern should also be included in the documentation circulated prior to the meeting.

There are 3 possible outcomes of this meeting:

- Satisfactory improvement made and no further action required. Where the outcome is that satisfactory improvement has been made, and the targets reached, the employee will be advised that no further action will be required.
- Significant improvement made, however, extension of review period required. The performance improvement plan should be revised to cover the improvements required and which targets remain for the extended review period.
- There is an unacceptable level of improvement and therefore, a capability hearing is to be convened.

7.2 If, as a result of a final written warning being issued at Stage One, dismissal is a possible outcome, the matter should instead be referred directly to the Capability Hearing.

7.3 If the person conducting the meeting deems that further action is required as a result of insufficient progress being made, this will usually take the form of a final written warning which should mirror any previous warnings that have been issued.

8. FINAL WRITTEN WARNING:

8.1 If the head teacher/manager deems that further action under the capability procedure is required as a result of insufficient progress being made, this will usually take the form of a final written warning. The length of the next review period will depend on how long the employee has already been subject to the procedure. It will usually be equivalent to 6 weeks, however this may be shortened where there are serious

concerns. It is recognised that it isn't in the interests of either the school, the local authority or the individual for these matters to take longer than necessary and it is expected that the process would be concluded after a maximum of two terms from entry. A final written warning will usually remain 'live' for 12 months.

- 8.2** The outcome of the hearing should be notified to the employee in writing in accordance with the procedure detailed under stage one, including details of the right of appeal. The support plan, revised as appropriate, should also be reissued at the same time, or shortly after.

9. CAPABILITY HEARING

- 9.1** The Head Teacher will be responsible for convening a Capability Hearing where there has been an unsatisfactory level of improvement. The Head Teacher may be accompanied by their HR provider and a note taker.
- 9.1.2** Where performance has still not improved to a satisfactory standard, following a Stage One and Stage Two meeting (or following a Stage One meeting where the shortened procedure has been implemented and where dismissal is a possible outcome of a further formal meeting to consider the employee's performance, the matter should be referred to the Governors' Disciplinary/Capability Panel who will convene a formal hearing to consider the case. In hearings for unattached teachers, the local authority will nominate a senior manager to chair the panel.
- 9.1.3** The Chair of the Hearing Panel should write to the employee giving him/her the following information in writing at least 10 working days' in advance:
- Information about the nature of unsatisfactory performance, and detail of the process and support to date;
 - The date, time and location of the meeting, and the names of those who will be present;
 - The possible consequences for the employee in terms of the capability procedure, including the fact that dismissal could be an outcome;
 - Copies of any relevant reports, written evidence or statements;
 - Names of witnesses to be called
 - Confirmation of the right to be accompanied by a trade union representative or work colleague and to state his/her case and present evidence at the meeting (employees will be required to provide copies of any written evidence he/she intends to present and names of any witnesses at least 2 working days before the hearing);
 - A copy of the Capability Policy and Procedure (where this has not already been given);
 - A copy of the procedure for the hearing.
- 9.1.4** An officer of the authority will attend any proceedings in community or voluntary controlled schools where a possible outcome could be dismissal (and, if accorded advisory rights, in foundation and voluntary aided schools). HR advice will be called upon in all cases.

9.2 Conducting the Meeting

- 9.2.1 The meeting should be conducted in a quiet, uninterrupted location and a note-taker should be available. The order of proceedings which will usually be followed at the hearing can be found at **Appendix 1**.
- 9.2.2 The meeting may be adjourned if, in the view of the Chair of the Panel, the meeting cannot continue until new evidence is investigated.

9.3 After the Meeting

- 9.3.1 After the meeting, the Governors' Disciplinary/Capability Panel will consider all the evidence presented to them and, on the balance of probabilities, whether the concerns about the individual's performance are justified and, if so, what appropriate outcome should be reached- and decide whether or not there has been sufficient improvement to performance. If there has, the capability process should end. If sufficient improvement hasn't been achieved action should be taken which may include dismissal.
- 9.3.2 In reaching the decision on appropriate action, consideration should be given to:
- Whether there is evidence that the concerns are justified;
 - The degree of underperformance, the employee's capability record (including current warnings) and the opportunities to improve already presented to the individual;
 - Whether the support to be made available to the individual was delivered, and whether it was appropriate to the circumstances;
 - Whether standards of other employees are acceptable, and that this employee is not being unfairly singled out;
 - Any special circumstances which might make it appropriate to adjust the severity of the formal action;
 - The likely impact on the school (and particularly on pupils) of a decision to allow the individual to remain in post;
 - Whether the proposed course of action is reasonable in view of all the circumstances.
- 9.3.3 Where dismissal is being considered, the panel should first discount options which could be put forward as an alternative to dismissal, such as for support staff could include demotion or transfer to another post which more closely matches the employee's capabilities.
- 9.3.4 The employee should be notified of the decision as soon as possible, and in any event this should be confirmed in writing within 5 working days, including:
- Whether the panel has found that there is a case to answer;
 - What, if any, formal action is being taken, including an explanation of the decision;
 - Where the outcome does not result in a decision to dismiss but where there are still concerns, what actions, improvements and learner outcomes are needed to obviate the need for a further Stage 3 meeting;
 - How long the warning (if any) will remain current;
 - The right to appeal against any formal action, by confirming this in writing to the Clerk to the Governing Body within 5 working days of receipt of the letter

and outlining the grounds for appeal.

- 9.3.5 A decision to dismiss must be with notice, although in most cases the employee will not be expected to attend work. In community schools and voluntary controlled schools, any decision to dismiss and the reasons for it, must be confirmed in writing to the local authority (via the Schools HR Team), as it is the local authority which is responsible for issuing a notice of termination of contract within 14 days of such a notification

10. WITHOLDING INCREMENTAL PAY PROGRESSION

Consideration will be given as to whether an employee should progress through the pay spine whilst their capability is under review.

- **Teaching Staff**

Pay progression will be in accordance with the school's pay policy. Once a formal capability process commences the appraisal process will be paused. Pay progression is awarded following a successful appraisal review therefore there will be no opportunity for incremental pay progression whilst being monitored under the formal capability process.

- **Support Staff (Green Book Employees)**

The conditions of service for support staff allow for the withholding of increments where performance is not satisfactory. If the employee's performance becomes satisfactory and is maintained, a pay progression increment can be paid at the next increment date, but this will not be backdated.

11. III-HEALTH ABSENCE

- 11.1 The sickness absence of an employee during the procedure will not result in any delay to review meetings or hearings beyond what is reasonable. One attempt to reschedule the hearing will be made where sickness absence has intervened and it should be explained to the employee that if s/he is still unable to attend on the rescheduled date that the meeting will proceed in their absence. The employee will be offered the alternative option of making a written submission.

- 11.2 Absence which appears to have been triggered as a result of the instigation of the formal policy, especially if it is likely to be long term, will be referred to Occupational Health for advice on the prognosis and the likelihood that the employee will be able to return to work.

12. APPEALS PROCEDURE

12.1 Right of Appeal

- 12.1.1 There shall be a right of appeal against any decision to impose a formal warning or other formal sanction as a result of action taken by the manager, head teacher or by governors. In exercising this right, an employee must confirm the grounds on which he/she is making the appeal. The process of assessing and reviewing capability in accordance with the formal procedure will continue pending the outcome of any appeal i.e. the review process will continue whilst the appeal is heard.
- 12.1.2 Appeals against warnings may be heard by the head teacher or one or more

governors, in accordance with the scheme of delegation in place and bearing in mind the need to secure impartiality at every stage of the process. The head teacher will not hear an appeal against his/her own decision. Appeals against dismissal will always be heard by the Governors' Appeals Panel. References to the Governors' Appeals Panel hereafter may therefore be interpreted accordingly, depending on the nature of the appeal.

12.2 Preparing for the Meeting

- 12.2.1 The appeal shall be heard by a panel of governors who have had no previous involvement in the case. It should be arranged to take place as soon as practicable, allowing the employee 10 working days' notice of the date. The progress of the capability procedure will continue pending the outcome of any appeal.
- 12.2.2 Any additional documents to be used at the hearing (e.g. new statements or evidence) or details of any third parties to be called should be exchanged by the parties no later than 2 working days before the hearing to allow for preparation time.

12.3 Conducting the Meeting

- 12.3.1 The purpose of the meeting is for the Governors' Appeals Panel to consider the grounds for appeal and to review the fairness of the outcome of the original meeting. New evidence may be considered at the appeals stage, but no additional grounds for action against the employee may be introduced. The usual format for conducting appeal hearings is included as **Appendix 1**.

12.4 After the Meeting

- 12.4.1 Within 5 working days of the appeal hearing taking place, the employee should be notified of the outcome and any actions which have been determined. There is no further right of appeal.
- 12.4.2 In community and voluntary controlled schools, the local authority is responsible for confirming the termination of contract with the employee. The local authority must, therefore, be kept informed about the outcomes of appeals against dismissal.
- 12.4.3 If a dismissed employee is reinstated on appeal, his/her salary will be back-paid to the date of the original termination, minus any monies already paid in respect of notice.

13. CONSIDERATIONS AND CIRCUMSTANCES

13.1 Scheduling Formal Meetings

Meetings should be held during the employee's usual working day/hours. Other arrangements can be made, by mutual agreement. School closure periods will generally result in a suspension of the procedure.

- 13.1.1 The employee is expected to make every effort to attend at the required time. If this presents serious difficulties, or the employee's representative is unable to attend, an alternative date may be suggested by the employee. This will not be unreasonably declined, provided it does not result in an unacceptable delay (usually a delay of no more than 5 working days will be acceptable). Any

subsequent postponements, or a failure of the employee to turn up to a scheduled meeting on more than one occasion, is likely to result in the formal capability meeting proceeding and being decided on the basis of written evidence. It is the employee's duty to arrange for their companion to attend.

13.2 Formal Action against Trade Union Representatives

13.2.1 Where a formal investigation or capability meeting is being arranged in relation to a trade union representative employed by the school, the case must first be discussed with a full-time official from the appropriate union (after obtaining the employee's agreement)

13.3 SUSPENSION

13.3.1 There may be exceptional instances where suspension is necessary while investigations into concerns about competence are carried out. Suspension is not an assumption of wrongdoing and is not considered a formal sanction. It is most likely to be deemed appropriate in cases where incompetence could put other parties or property at risk. The provisions relating to suspension (including consideration of alternatives to suspension) contained within the disciplinary procedure will apply in such circumstances.

13.4 Grievances during capability

13.4.1 Grievances can run concurrently with any formal procedure which includes an appeals mechanism, but with regard to process matters rather than the substantive matters which can be addressed by rights of appeal. This should not cause delay to the formal procedure.

13.5 Record Keeping

13.5.1 A record of documentation relating to capability hearings and appeals will be retained on file, although live warnings will be disregarded after the appropriate period.

13.5.2 Records will be treated as confidential and kept in accordance with the principles of the Data Protection Act 1998.

14. REFERRALS TO PROFESSIONAL BODIES

14.1 The school adheres to all procedures in relation to capability referrals to the Teaching Agency.

APPENDIX 1

Order of Proceedings - Capability Hearing

The conduct of the hearing will be the responsibility of the Chair which can be either the head teacher where they have full delegation or a member of the Panel of Governors.

The order of proceedings can be adjusted to suit the circumstances if necessary, in consultation with the parties, providing the overall principles, aimed at securing a fair hearing, are adhered to.

1. The head teacher/chair introduces all those present and outlines purpose of hearing and any procedural arrangements.
2. The nominated manager/school representative (supported as necessary by his/her HR Adviser, if any) presents the case against the employee.
3. The employee and/or representative) have the opportunity to question the nominated manager/school representative.
4. The head teacher/panel has the opportunity to question the nominated manager/school representative.
5. The nominated manager/school representative may call witnesses.
6. The employee (and/or representative) has the opportunity to question each witness.
7. The head teacher/panel may question each witness.
8. The employee (and/or representative) presents his/her case.
9. The nominated manager/school representative has the opportunity to question the employee.
10. The head teacher/panel has the opportunity to question the employee.
11. The employee (and/or representative) may call witnesses.
12. The nominated manager/school representative has the opportunity to question each witness.
13. The head teacher/panel has the opportunity to question each witness.
14. The nominated manager/school representative has the opportunity to summarise the case
15. The employee (and/or representative) is invited to make any closing remarks.
16. All persons withdraw, other than the head teacher/panel, the note-taker and any professional advisers present, while the head teacher/panel deliberates.
17. The parties may be either released or recalled to clarify any points of uncertainty.
18. Where the head teacher/panel cannot reach a decision before the parties are released, the parties will agree how the decision will be communicated. In any event, formal notification of the outcome will be sent in writing within 5 working days of the hearing.