

CAPABILITY POLICY AND PROCEDURE

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|  | Reviewed by: | Governors' Personnel Committee |
| | Approved by: | Full Governing Body |
| | Date approved: | 27 th February, 2019 |
| | Next review due by: | End of 2021/22 academic year |

| Document Control | |
|-------------------------|---|
| Title | Capability Policy and Procedure |
| Supersedes | A007 and A008 |
| Purpose | To ensure compliance with the principles set out in the model procedure published by the Department for Education (2012) and to take into account the ACAS Code of Practice on disciplinary and grievance procedures and related guidance (2015). |
| Related Policies | Appraisal Policy and Procedure |
| Author | Trinity CE High School |

Under the public sector equality duty, all schools must have due regard to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it and to foster good relations across all protected characteristics. This means all schools must take into account equality considerations when policies are being developed, adopted and implemented, and in accordance with DfE advice: *Statutory policies for schools September 2014*.

Trinity CE High School regularly reviews all policies and procedures to ensure compliance with education and employment legislation including the Equality Act 2010.

Contents

| Paragraph | Page |
|--|------|
| 1. Introduction | 3 |
| 2. Scope | 3 |
| 3. Principles | 4 |
| 4. Appraisal | 5 |
| 5. Role and Responsibilities | 6 |
| 6. Transition from Appraisal to Capability | 6 |
| 7. Formal Stage One | 7 |
| First Performance Review Meeting | |
| Outcome of First Performance Review Meeting | |
| First formal monitoring and review period | |
| Monitoring Meeting | |
| Outcome of Monitoring Meeting | |
| 8. Formal Stage Two | 11 |
| Second Monitoring and review period | |
| Second review meeting | |
| Outcome of Second Review Meeting | |
| Final Review Meeting | |
| Outcome of Final Review Meeting | |
| 9. Formal Stage Three | 12 |
| The Disciplinary (Capability) Hearing | |
| Outcome of Disciplinary (Capability) Hearing | |
| 10. Right of appeal | 13 |
| 11. Keeping written records | 15 |
| Appendix A - Conduct of Disciplinary (Capability) hearings | 16 |
| Appendix B - Appeal form | 17 |
| Appendix C - Conduct of appeal hearings | 20 |

1. Introduction

- 1.1 Trinity CE High School encourages all employees to achieve and maintain acceptable standards of performance and this procedure is designed to ensure fairness and consistency of approach. The procedure sets out the process Trinity CE High School will follow when an employee's performance falls below the required standards for the job because of a lack of aptitude, skills or ability.
- 1.2 This procedure takes into account the principles set out in the model capability procedure published by the Department for Education (2012) and takes into account the basic provisions of fairness set out in the ACAS Code of Practice on disciplinary and grievance procedures (2015).

2. Scope

- 2.1 This policy and procedure applies to all employees at Trinity CE High School whose employment is under the purview of the Governing Body including the Head. It does not apply to self-employed staff, support staff who are still in their probationary period, contractors, external consultants, agency staff or governors.
- 2.2 This procedure applies only where there are serious concerns relating to an employee's underperformance which the school's appraisal/supervision process has been unable to address.
- 2.3 Separate procedures or guidance exist for action and dismissals relating to the following:
 - performance relating to misconduct;
 - redundancy and/or reorganisation;
 - ill health and long term sickness absence;
 - persistent short term sickness absence;
 - termination of a fixed term contract of employment where the term of an employee's contract expires without it being renewed;
 - circumstances where to continue to employ an employee would involve a breach of a statutory enactment or provision
 - failure by an employee (support staff only) to satisfactorily complete a probationary period.
- 2.4 Where an employee's health or disability is affecting their performance, the school will consider appropriate reasonable adjustments in accordance with the Equality Act 2010. In appropriate circumstances, action under this procedure may stop and the matter may be dealt with under the school's Managing Attendance Policy and Procedure.
- 2.5 Where, following investigations or discussions under this procedure, it is found that the performance issues relate to an employee's misconduct, action under this procedure may stop and further action taken as appropriate under the school's Disciplinary Policy and Procedure.
- 2.6 In the event of capability concerns arising during the statutory induction period of a Newly Qualified Teacher (NQT), the school will follow its induction procedure which must have regard to the Statutory Guidance from the Department for Education on induction for NQTs (revised September 2015). The Statutory Guidance states that there may be a few particularly serious cases where it may be necessary to instigate

capability procedures at a stage before the end of the induction period and which may lead to dismissal before the end of the induction period. If this is the case, for as long as the NQT remains at the school, the Statutory Guidance makes clear that the induction process must continue in parallel with the school's capability procedure and that the appropriate body must be informed

3. Principles

3.1 This procedure is designed to support and encourage all employees who are experiencing difficulties to achieve and maintain the school's expectation of high achievement and attainment for all students. It aims to ensure fairness, equity and consistency in the day to day management of an employee's performance. The school will support staff experiencing difficulties by

- ensuring that performance expectations and standards are defined and monitored and that appropriate feedback, training and support are given through reviews to enable employees to meet the required standards / expectations;
- ensuring that employees are provided with a clear understanding of their role, job description and the standards expected and required of them;
- providing support to enable employees to reach the required standard of performance through :-
 - effective induction to new roles;
 - access to professional opportunities, including coaching and mentoring where appropriate;
 - effective application of the school's appraisal policy/support and supervision arrangements within the context of the relevant professional standards where appropriate;
 - a commitment to identify and address performance concerns at the earliest reasonable opportunity.

3.2 The Headteacher and line managers will try to address and resolve any performance concerns at the earliest reasonable opportunity. This will be a supportive measure through informal management meetings. Where this approach has been unsuccessful and all support has been exhausted the formal capability policy and procedure will be considered.

At all stages of the formal process, employees will be advised of the nature of the performance concerns and will be given the opportunity to state their case and to present relevant information before any decisions are made

3.3 At all stages of the formal process, employees will have the right to be accompanied by a companion who will be either a work colleague, a person employed by a Trade Union or a Trade Union representative. Employees must make their own arrangements if they wish to be accompanied at meetings and hearings.

3.4 Employees will normally be given at least five school working days' notice of all formal meetings under this procedure. Where reasonably possible and practicable,

all formal meetings and hearings will take place at a location, on a date and at a time which is mutually convenient to the school, the employee and the employee's representative. Meetings and hearings will normally be held during the employee's working day

- 3.5 Employees will be advised to their right to appeal any formal action imposed under this procedure. If an employee wishes to exercise his/her right of appeal he/she must use the appeal form attached to this procedure (see Appendix B).
- 3.6 Where an employee is repeatedly unable or unwilling to attend a meeting or a hearing under this procedure, the school may conclude that a decision will be made on the information and evidence available. In reaching such a decision, the seriousness of the capability concerns under consideration will be taken into account together with the employee's performance record. Any available medical opinion as to whether the employee is fit to attend the meeting/hearing will also be taken into account. In such cases, the employee will be informed of the position in advance of the meeting/hearing and the employee may submit their case in writing and/or be represented by a colleague or Trade Union Representative at the meeting/hearing.
- 3.7 Information relating to the capability process shall remain confidential subject to safeguarding obligations. Records will be maintained in accordance with the requirements of the GDPR 2018 and the Data Protection Act 1998.
- 3.8 All person(s) involved in the capability process will be mindful of their obligations and duties under the Equality Act 2010. Reasonable adjustments will be made where required to assist an employee or his/her companion with a disability. If there are any language issues affecting an employee or his/her companion, these will be reasonably addressed so that the proceedings can take place fairly.
- 3.9 If an employee resigns when formal action is being considered or has commenced, under the capability process the action/process may continue to an appropriate conclusion at the discretion of the Head (or the Chair of Governors in cases where the Head is the subject of the procedure). Where there are safeguarding concerns the action/process **must** continue and **must** be concluded.
- 3.10 Where an employee raises a grievance during the formal process the school's grievance procedure should be followed. In exceptional circumstances, the capability procedure may be temporarily suspended in order to deal with the grievance but in the majority of cases it will be appropriate to deal with both issues concurrently.
- 3.11 The timescales in this procedure may be amended by mutual agreement. All parties will ensure however that review periods, hearings and appeal processes progress as quickly as is reasonably possible for the benefit of all parties concerned.

4. Appraisal

- 4.1 As part of the normal management and appraisal process, governors, Heads and other relevant managers may from time to time discuss aspects of performance with an employee who may not be performing to an acceptable standard. Such discussions will take place informally and will be addressed through the appraisal policy / supervision arrangements and do not fall within the scope of the capability procedure.

4.2 If informal support within the appraisal process does not produce the required improvements within a reasonable timescale, the appraiser or line manager must seek advice from the Headteacher who will decide whether the matter should be dealt with under this procedure. Where the matter involves the Headteacher, the Chair of Governors must be notified by the Chair of the Appraisal Panel. The Chair of Governors will decide whether the matter should be dealt with under this procedure

5. Roles and Responsibilities

5.1 The Governing Body has delegated capability matters to the person(s) below who have the authority to act under this procedure.

| | Formal Stage One/ Two Meetings | Appeals from Formal Stage One/Two Meetings | Formal Stage Three Capability Hearing | Appeals from Formal Stage Three Hearing |
|--|---|--|--|---|
| All employees (teachers and support staff) except Headteacher | Headteacher, or nominated senior leader | Headteacher (if not previously involved) or panel of three governors | Headteacher (if not previously involved) or panel of three governors not previously involved | Panel of three governors not previously involved. |
| Head/Principal | Chair of the Governing Body | Panel of three governors (not including Chair of Governors) | Panel of three governors not previously involved | Panel of three Governors not previously involved |

- i. Formal capability proceedings against an employee must only be initiated by the Headteacher or the Chair of Governors. At Formal Stage One the Headteacher may delegate it to an appropriate person who will normally be a member of the school's management team.
- ii. Formal capability proceedings against Headteacher must only be initiated by the Chair of Governors. They may delegate the matter to a nominated governor to carry out the investigation.

6. Transition from Appraisal to Formal Capability

6.1 There is no automatic transition from appraisal to the capability procedure. Where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee. Every effort should be made to resolve performance concerns within the appraisal process / supervision arrangements through targeted additional support agreed with the employee with regular feedback and review. Where performance concerns are such that the employee is not performing to the required standard, the appraiser/Line Manager should ensure that the Head or other nominated senior leader is included in these discussions.

6.2 Where performance concerns are not resolved through a minimum of two cycles of targeted support and feedback within the appraisal process, consideration should be given to initiating the formal capability process under this procedure. The decision to

consider the transition from the appraisal process to formal capability should not therefore come as a surprise to the employee.

- 6.3 Where there is insufficient evidence of progress against the objectives at interim review meetings and at the end of the second cycle of support, a formal performance review meeting should be held with the employee. The purpose of this meeting is to summarise the concerns and inform the employee that the on-going management of the concerns through the appraisal process will be suspended and will now transfer to the capability procedure.

7. Formal Stage 1

First performance review meeting

- 7.1 The employee should be invited to the first performance management review meeting which represents formal entry into the capability procedure. The meeting will be conducted by the Head or other nominated senior leader (or a governor panel in the case of concerns about the performance of the Head).
- 7.2 At least **five school working days** notice of the meeting should be given to the employee. The notification should be in writing and will include:
- the time and place of the meeting;
 - an outline of the performance concerns;
 - the possible outcomes of the meeting;
 - the right to be accompanied as outlined in paragraph 3.3;
 - copies of any written evidence that may be relied upon.
- 7.3 The purpose of the capability meeting is to establish the facts; to provide an opportunity for the employee to respond to the on-going performance concerns and to make representations. The employee may provide new information or a different context to that which has already been collected.
- 7.4 The employee will be reminded of any informal discussions which have taken place and the steps taken to support an improvement in the employees performance to date.
- 7.5 The school may request the attendance of its HR Advisor at the performance review meeting.

Outcome of first performance review meeting

- 7.6 At the conclusion of the meeting, a decision will be taken in relation to the way forward. This could be one of the following:-
- a) That there are not sufficient grounds for pursuing the capability procedure and therefore formal action under this procedure will end. Any remaining concerns will be addressed through the appraisal or informal support process;
 - b) That the concerns are as a result of misconduct or ill health and therefore action under this procedure will end and the appropriate procedure applied;

c) further investigations are necessary. The meeting may be adjourned and reconvened once the investigation is complete;

d) The shortcomings identified and what standards are not being met.

- guidance on the improved standards required of the employee. This may include setting objectives, identifying success criteria and the evidence that will be required to determine improved performance – see below.
- The timetable for improvement and an explanation of how performance will be monitored and reviewed.
- The review period which will normally be between four and six weeks and will start immediately.
- A formal warning that failure to improve within the set period could lead to dismissal. Any such warning will remain on the employees file for a period of 12 months.
- In serious capability cases a final written warning may be appropriate.

7.7 The confirmation of the performance concerns, agreed targets and support provided by the school to the employee should take into account the following:

- The nature of the performance concerns should be specific, clear and capable of being assessed. For teachers, it will be necessary to identify which of the relevant Teacher Standards are not being met, according to the employee's career stage, role and responsibilities. For support staff, it will be necessary to identify the performance concerns in accordance with the job description, role and responsibilities;
- The guidance should be given on the standard of performance required to ensure the employee's removal from the capability procedure. This should be clear and specific and should include setting of objectives focused on the specific areas of concern which need to be addressed. It should also identify success criteria and the evidence that will be used to assess whether the required improvements have been made;
- The monitoring and review activity to be undertaken during the review period, should be outlined with an indication of how performance will be reviewed (e.g. through lesson observations and work scrutiny) and by whom;
- The support that will be made available to help the employee improve their performance will be outlined including details of who will be involved in providing that support. This might include changes to working practices within the terms of the employee's job description, increased supervisory support or mentoring, feedback from classroom or other observations, modified workloads or tasks for a specified time and training in the areas of deficiency or any other reasonable support or training.
- The timetable of the first performance review period and monitoring will be detailed as will the date and time of the further review meeting. The monitoring and review period will be reasonable and proportionate and should provide sufficient period for an improvement to take place. The review period will normally be for between four and six school working weeks but may be extended beyond six weeks if this is considered reasonable and appropriate in the particular case. The review period

should not last for more than ten school working weeks save for in exceptional circumstances. The review period will start immediately.

In very serious cases, it may be appropriate following the capability meeting to issue the employee with a final written warning. The circumstances where a final written warning may be appropriate at this stage of the procedure include the following:-

- where the seriousness of the level of under-performance means that students' education and/or safety/and or the management of the school is jeopardised;
- where it is evident that an acceptable level of improvement is beyond the ability of the employee being assessed.
- where there is a lack of co-operation with the process;
- or a further serious deterioration in performance is identified.

7.8 Written warnings will confirm the information provided verbally to the employee at the capability meeting and will make clear that a failure to improve could lead to the employee's dismissal.

Where a first written warning is issued, the employee will be advised that a failure to improve to the required standard following the first monitoring and review period will result in the matter moving to Formal Stage Two of the capability procedure.

Where a final written warning is issued, the employee will be advised that a failure to improve performance to the required standard following the first monitoring and review period will result in the matter being referred to a formal capability hearing under Formal Stage Three of this procedure.

Written warnings will advise employees of their right to appeal which must be received by the school within five school working days of the date the warning is communicated to the employee. Where an employee appeals against a warning, this will not delay the start of the monitoring and review period.

Written warnings will remain on the employee's file for a period of twelve months from the date the warning is communicated to the employee.

7.9 Where an employee appeals against a warning issued, this will not delay the start of the first monitoring and review period.

First formal monitoring and review period

7.10 The first monitoring and review period should start immediately following the first performance review and will be for a maximum of **six school working weeks**. The purpose of the review period is to provide every reasonable opportunity for monitoring, support and improvement.

7.11 Monitoring, evaluation, feedback, guidance and support will take place during the review period. The monitoring activities should be staged appropriately over the review period so that the employee is able to demonstrate progress within the timeframe and take action on feedback so that the required standards can be met.

7.12 Monitoring that takes place through lesson observations will consist of announced and unannounced visits.

Monitoring meeting

- 7.13 A monitoring meeting will be held at the end of the review period in line with the agreed timescale. At least **five school working days before the meeting** the employee should be notified, in writing, of:
- the time and place of the meeting;
 - the right to be accompanied by a companion or representative;
 - confirmation of the performance concerns that are to be reviewed;
 - any documentation to be considered at the review meeting and provided with copies;
 - the possible outcomes of the meeting.
- 7.14 The meeting will be held by the Head or other appropriate senior leader who may be accompanied by the school's HR Advisor
- 7.15 The purpose of the meeting is to consider the evidence gathered throughout the first monitoring and review period. The employee's performance will also be assessed focusing on the extent to which improvements have been made in relation to the targets for improvement and success criteria within the review period. After meeting the appropriate way forward will be determined as detailed below.

Outcome of monitoring meeting

- 7.16 The outcome of the monitoring meeting will determine either:

a) the employee has reached an acceptable standard of performance and no further action is required under the procedure. The employee must be advised that acceptable performance must be maintained and that if performance becomes unsatisfactory within **twelve calendar months** of the date of the review meeting then any further action taken under the capability procedure may take into account action taken previously.

or

b) some progress has been made and there is confidence that there will be further progress, so the monitoring and review period may be extended. The school will confirm the continuing areas of concern and the required standards to be met. Consideration will be given to any further targeted support that can be provided. A further monitoring and review period will be given, normally no longer than **four school working weeks**. At the end of this period a further monitoring meeting will be convened but the matter will remain to be dealt under the first stage of this procedure.

or

c) there has been insufficient or no improvement in performance in which case the employee will be informed that the matter will progress to Stage 2 and a formal written warning will be issued to the employee if not already issued.

d) if a final written warning has already been issued and there has been insufficient or no improvement in performance a decision will be taken to arrange a capability hearing in accordance with stage three of this procedure.

8. Formal Stage Two

Second monitoring and review period

- 8.1 The second monitoring and review period of a maximum of **six school working weeks** should start immediately following an employee's final written warning and will follow the provisions outlined above.

Second review meeting

- 8.2 At the end of the second monitoring and review period and within the timescales agreed, a second review meeting will be held.
- 8.3 The Monitoring Officer will ensure that the arrangements for the second review meeting follow the same format 7.13 to 7.15 above.
- 8.4 A decision on the way forward will be made after all the facts and any representations that the employee has made have been fully considered. The Monitoring Officer should adjourn the meeting to consider a decision based on all the available information/evidence.

Outcome of second review meeting

- 8.5 At the conclusion of the second review meeting the Monitoring Officer may decide that:
- the employee has reached an acceptable standard of performance and that the appraisal/support and supervision process will re-start. The employee must be reminded that the standard of performance must be maintained and that if there is a deterioration within **twelve calendar months** of the review meeting, then action previously taken under the capability procedure may take into account.

or

- some progress has been made and there is confidence that more is likely, so the monitoring and review period may be extended. The Monitoring Officer will confirm continuing areas of concern and the standards required. Consideration will be given as to whether further support that can be provided. A further review period will be given of no more than **four school working weeks**. At the end of period a further review meeting will be held.

or

- There has been no or insufficient improvement in performance and a **final written warning issued**. The employee should be advised that failure to achieve an acceptable standard of performance within the set timescale of no more than **four school working weeks** may result in dismissal. The Monitoring Officer will confirm

the areas of continuing concern and the standards required. A final review meeting will be held at the end of the review period.

- Where a final written warning has already been issued, and there is no, or insufficient improvement, a decision will be taken to arrange for a dismissal hearing under **Stage Three** of the procedure.
- The employee will be informed of the outcome of the second review meeting in writing, within **five school working days** of the meeting.

Final Review Meeting

- 8.6 At least **five school working days** notice will be given to the employee of the final review meeting.
- 8.7 The Monitoring Officer will ensure that the provisions for the final review meeting will follow the same format as 7.13 to 7.15 above.
- 8.8 At the final review meeting, the Monitoring Officer will consider if an acceptable standard of performance has been achieved during the monitoring and review period and will provide the opportunity for the employee to make any relevant representations.

Outcome of final review meeting

- 8.9 Where, having considered all the available evidence and employee representations, the Monitoring Officer considers that an acceptable standard of performance has been achieved, the capability procedure will end and the appraisal process will re-start.
- 8.10 Where the Monitoring Officer determines that performance remains unsatisfactory, and there is no evidence or significant reason to extend the monitoring and review period, the matter will be referred to a dismissal hearing under stage 3.
- 8.11 The decision at the conclusion of the final review meeting will be issued to the employee within **five school working days** of the meeting.

9. Formal Stage Three

The Disciplinary (Capability) Hearing

- 9.1 The hearing should be convened by the clerk/HR advisor. The employee will be given **ten school working days'** notice of the disciplinary (capability) hearing. The letter will include documentation to be considered by the Hearing officer(s).
- 9.2 The format of the hearing should follow the provisions at Appendix A.
- 9.3 The purpose of the hearing will be to consider the recommendation for dismissal. The hearing will consider the evidence presented by the Monitoring Officer and representations from the employee.

At least five school working days before the hearing, the employee will be provided with copies of the documentation to be presented by the person conducting the case on behalf of the school for consideration by the Hearing Officer(s).

A postponement may be granted if the employee or their representative is unable to attend on the date proposed for the hearing. A postponement should be for no more than five school working days after the date the original date is proposed however an extension to this time limit can be made by mutual agreement. Where a hearing is rearranged and the employee is unable to attend a second time, the hearing will normally convene as arranged and a decision taken in the employee's absence.

Outcome of disciplinary (capability hearing)

9.4 Following presentations from both parties, the Hearing Officer(s) will adjourn the hearing to consider all the available evidence/mitigating circumstances before making a decision as follows:-

- The evidence presented does not warrant dismissal and a further monitoring review period is set;
- That performance remains unsatisfactory and redeployment to a suitable role is considered as an alternative to dismissal. Redeployment will always depend on if a vacant post is available and not created as a result of a capability hearing;
- Where there is sufficient mitigation presented, consideration may be given to demotion to an alternative role appropriate to the employee skills and experience where a vacant post is available. Pay protection would not be applicable.
- Dismissal with contractual notice in circumstances where continued employment cannot be sustained.

9.5 The decision of the Hearing Officer(s) will be confirmed to the employee, in writing, within **five school working days** of the hearing. The letter should also detail the process for submitting an appeal as outlined in paragraphs 10.1 to 10.16.

NB: Once the decision to dismiss has been taken, the Hearing Officer(s) will dismiss the employee with notice.

10. Right of Appeal

10.1 An employee may, within a period of **ten school working days** from the date of the outcome letter, appeal against any formal performance warning under this procedure.

10.2 The appeal hearing will be heard by the Appeals Committee comprising of three governors.

10.3 The Appeals Committee may request the assistance of an HR or other professional adviser to help coordinate the appeal and to provide advice on the case including advice on procedure. The person providing this assistance is referred to in this procedure as the Clerk/Adviser. An employee who wishes to appeal must do so by completing and returning the appeal form (**see Appendix B**) within a period of **ten school working days** from the date of the outcome letter from the Clerk/Adviser.

10.4 When lodging an appeal the employee should state their grounds for appeal. Appeals will be considered on the following grounds:

- **the procedure** - there has been a failure to follow the procedure which has had a material effect on the decision;
 - **the decision** - the evidence did not support the conclusion reached;
 - **the penalty** - the action/decision imposed was too severe given the circumstances
 - **new information** - new information or evidence has come to light which should be considered and which was not previously available.
- 10.5 The employee must ensure that the appeal clearly demonstrates that there is information/evidence available to substantiate the grounds for appeal.
- 10.6 The Clerk/Adviser write to the employee at least **ten school working days** before the appeal hearing providing details of:-
- the date, time and location of the appeal hearing;
 - the names of the Appeals Committee members;
 - the name of the chair of the Appeals Committee;
 - the employee's right to be accompanied by a companion.
- 10.7 At least **five school working days** prior to the appeal hearing, both parties must provide the Clerk/Adviser copies of any reports, written submissions or other supporting documentation or evidence for consideration at the appeal hearing. No "new" documents may be presented by either party at the appeal hearing.
- 10.8 The employee will present his/her appeal case and may be accompanied by his/her companion. The employee will only present evidence which is directly relevant to the specified grounds of appeal.
- 10.9 The representations on behalf of the school at the appeal hearing will normally be presented by the person responsible for deciding the outcome of the monitoring and review period, which is the subject of the appeal (referred to as the Monitoring Officer).
- 10.10 The Appeals Committee will consider the grounds of appeal and the Monitoring Officer's representations. If witnesses provided evidence at the formal capability hearing they will not be recalled except for the purpose of correcting any evidential or procedural defects in respect of the capability meeting, or where new evidence emerges at the capability appeal hearing that requires witness evidence.
- 10.11 The decision of the Appeals Committee will be confirmed to the employee in writing normally within **five school working days** of the date of the appeal hearing.
- 10.12 Where an appeal against a warning is upheld, the matter will be referred by to the Monitoring Officer to consider further appropriate action.
- 10.13 If a decision is to disallow the appeal against a warning, the matter will continue at the appropriate stage of the procedure.
- 10.14 If a decision of the Appeals Committee is to uphold the decision to dismiss the employee, the notice of termination of contract will continue.

- 10.15 Where a decision to dismiss the employee is overturned by the Appeals Committee, the employee will be reinstated (or regarded) immediately and his/her pay will be backdated to the date it was stopped.
- 10.16 The decision of the Appeals Committee is final. There is no further right of appeal.

11. Keeping written records

- 11.1 The school will apply the records management policies and procedures to ensure that information is not held longer than is necessary.

It is important and in the interests of the school and the employee that records are kept at all stages of the process. It is not necessary to take verbatim notes but written records should accurately reflect what has been said.

Copies of notes made by or on behalf of the school at meetings and at hearings should be provided to the employee as soon as possible after the relevant meeting or hearing. In certain circumstances, it may be necessary for some information to be withheld, for example if a relevant exemption applies.

No-one may record a meeting or hearing under this procedure unless the prior agreement of all parties has been obtained.

APPENDIX A

Conduct of Disciplinary (Capability) Hearings

- 1 The Hearing Officer/Chair of the Capability Committee or the Clerk/Adviser will introduce all the parties present.
- 2 The school's case will be presented by the Monitoring Officer assisted by a HR or other professional adviser in the presence of the employee and his/her companion. The Monitoring Officer will call any witnesses on behalf of the school.
- 3 The employee and/or his/her companion will have the opportunity to ask questions of the Monitoring and witnesses.
- 4 The Hearing Officer(s) will have the opportunity to ask questions of the Monitoring Officer and witnesses.
- 5 The witnesses called on behalf of the school will leave the hearing when they have given their evidence and answered all questions.
- 6 The employee and/or his/her companion will put his/her case in the presence of the Monitoring Officer/HR Adviser. The employee and/or his/her companion will call any witnesses in support of the employee's case.
- 7 The Monitoring Officer/HR Adviser will have the opportunity to ask questions of the employee and his/her witnesses.
- 8 The Hearing Officer(s) will have the opportunity to ask questions of the employee and his/her witnesses.
- 9 The witnesses called by the employee will leave the hearing when they have given their evidence and answered all questions.
- 10 The Monitoring Officer/HR adviser will have the opportunity to sum up the school's case. The employee and/or his/her companion will have the opportunity to sum up the employee's case. The summing up will be without interruption.
- 11 Both parties and their representatives will withdraw.
- 12 The Hearing Officer(s) supported by the Clerk/Adviser will deliberate in private. The parties may be recalled to clarify points of uncertainty on procedure or on evidence already given. If recall is necessary, both parties will return notwithstanding the fact that the point of clarification/procedure is only relevant to one party.
- 13 If the Hearing Officer(s) is/are able to reach a decision within a reasonable time, both parties and representatives will be recalled and the Hearing Officer(s) or the Clerk/Adviser will inform the parties of the decision, the action to be taken (if any), and the employee's right of appeal. The hearing will end at this point.
- 14 If the Hearing Officer(s) is/are not able to reach a decision within a reasonable time, the parties will be recalled and advised of that fact and the hearing will be closed. The decision will be notified to the employee and/or their companion within **five school working days** of the date of the hearing.

APPENDIX B

APPEAL AGAINST DISCIPLINARY ACTION LACK OF CAPABILITY

Please complete this form in full if you have been disciplined on grounds of lack of capability and wish to appeal against this decision. You may complete it personally or with your permission, your representative may complete it on your behalf.

Please return this form, together with any supporting documents to the Clerk/Adviser to the Hearing Officer/Discipline and Dismissal Committee **within 10 school working days** of being advised in writing of the outcome of the disciplinary hearing.

You must clearly state why you wish to appeal and specify why you disagree with the disciplinary decision. Please indicate below the grounds for your appeal:

- a) Appeal against the facts
- b) Appeal against the decision
- c) Appeal on procedural ground
- d) New information is available

In all cases, you must give full details of your reasons on Page 2 of this document. If you are appealing on the ground that new information is available, you should also explain why this information has only just become available.

Please note that appeal cases will normally be structured against the grounds of your appeal and therefore will not be a rehearing of the original disciplinary case.

If, however, you wish to apply for a full rehearing of your case you must provide detailed reasons for your request in the space below. Your request will be considered by the Chair of the Appeals Committee and you will be notified of the outcome within five working day following receipt of your appeal.

Please complete this section only if you are applying for a full rehearing of your case.

My reasons for applying for a full rehearing of my case are as follows (continue on a separate sheet if necessary):

| |
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| | |
|---|--|
| Please provide the full names of any witnesses you wish to call | |
| Name 1. | |
| Contact number | |
| Address | |
| | |
| | |
| Name 2. | |
| Contact number | |
| Address | |
| | |
| | |
| Name 3. | |
| Contact number | |
| Address | |
| | |
| | |
| Name 4. | |
| Contact number | |
| Address | |
| | |
| | |

Note - If this form has been completed on behalf of the employee he/she must read it and/or have it read to him/her before he/she signs it.

| | |
|------------------------------|--|
| Signature of Employee: | |
| Signature of Representative: | |
| Date: | |

Appendix C

Conduct of Appeal Hearings

1 The Chair of the Appeals Committee or the Clerk/Adviser to the Appeals Committee will introduce all the parties present.

2 The employee and/or his/her companion will put the employee's case in the presence of the Monitoring Officer assisted by the HR or other professional adviser. The employee and/or his/her companion will call any witnesses.

3 The Monitoring Officer/HR Adviser will have the opportunity to ask questions of the employee and his/her witnesses.

4 The Appeals Committee will have the opportunity to ask questions of the employee and his/her witnesses.

5 The witnesses called by the employee will leave the hearing when they have given their evidence and answered all questions.

6 The Monitoring Officer/HR Adviser will present the school's case in the presence of the employee and his/her companion. The Monitoring Officer/HR Adviser will call any witnesses.

7 The employee and/or his/her companion will have the opportunity to ask questions of Monitoring Officer/HR Adviser and witnesses on the evidence given.

8 The Appeals Committee will have the opportunity to ask questions of the Monitoring Officer/HR Adviser and witnesses.

9 The witnesses called on behalf of the school will leave the hearing when they have given their evidence and answered all questions.

10 The employee and/or his/her companion will have the opportunity to sum up the employee's case. The Monitoring Officer/HR Adviser will have the opportunity to sum up the school's case. The summing up will be without interruption.

11 The parties and representatives will withdraw.

12 The Appeals Committee, supported by the Clerk/Adviser will deliberate in private. The parties may be recalled to clarify points of uncertainty on procedure or on evidence already given. If recall is necessary, both parties will return notwithstanding the fact that the point of clarification/procedure is only relevant to one party.

13 If the Appeals Committee is able to reach a decision within a reasonable time, both parties and representatives will be recalled and the Chair of the Appeals Committee or the Clerk/Adviser to the Appeals Committee will inform the parties of the decision, which may be to uphold the appeal, disallow the appeal or to impose a lesser disciplinary sanction. The employee will be advised (if appropriate) that there is no further right to appeal. The hearing will end at this point.

14 If the Appeals Committee is not able to reach a decision within a reasonable time, the parties will be recalled and advised of that fact and the appeal hearing will be closed. The decision will then be notified to the employee and/or his/her companion within five school working days of the date of the appeal hearing.