



Capability Policy and Procedures

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This policy and procedure has been produced by One Education’s HR and People service. The HR and People team provides management and HR support and advice to schools and academies purchasing their services under an agreed Service Agreement. For further information please contact the HR and People team via the HROne Helpline: 0844 967 1112 (local rate from landline) or HROne Helpline Email: hrpeople@oneeducation.co.uk Website: www.oneeducation.co.uk

This policy is recommended for adoption by all maintained schools including community, voluntary controlled, community special, maintained nursery, foundation, foundation special and voluntary aided schools. The School Staffing (England) Regulations 2009 require Governing Bodies in maintained schools to establish procedures for dealing with lack of capability on the part of school employees.

Although the 2009 Regulations do not apply to academies and free schools, it is good practice for all schools to have such procedures taking into account the principles set out in the model capability procedure published by the Department for Education (2012) and the basic provisions of fairness set out in the ACAS Code of Practice on disciplinary and grievance procedures (2015). It is therefore recommended for adoption by academies and free schools (modified as appropriate and taking into account the particular circumstances of the relevant academy or free school). Some school or academy specific provisions are included. The HR and People team can assist in further adapting this policy to fully reflect a school’s academy or multi academy trust (MAT) status. References in this policy to schools include a reference to academies and free schools unless otherwise stated. References in this policy to the headteacher include a reference to an academy or free school principal and references to the governing body include references to governing boards and/or trust boards as applicable.

Document Control	
Title	Capability Policy and Procedure.
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Supersedes	Capability Policy and Procedure March 2020.
Amendments	Referenced and explained the definition of a “School Working Day” and a “School Working Week” for School Support Staff and School Teaching Staff within the “Scope and Definitions” Section.
Related Policies/Guidance	Appraisal Policy and Procedure.
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Equality Statement: - Under the public sector equality duty (PSED), all schools/academies 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 schools/academies must take into account equality considerations when policies are being developed, adopted and implemented. The One Education HR and People team regularly reviews all policies and procedures which are recommended to schools/academies to ensure compliance with education and employment legislation including the Equality Act 2010. Consultation with schools/academies is an important part of this review process. Headteachers, Principals and Governing Bodies are asked to contact the HR and People team via the HROne Helpline if they believe there are any negative equality impacts in their school/academy in relation to the application of this policy/procedure. Schools should also contact HR and People team if they need to access this policy in a different format.

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1. Introduction

- 1.1 This procedure aims to encourage employees to achieve and maintain acceptable standards of performance and is designed to ensure fairness and consistency of approach. The procedure sets out the process the 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 and Definitions

- 2.1 This procedure applies only where there are serious concerns relating to an employee's under-performance which the school's appraisal/supervision process has been unable to address
- 2.2 This procedure applies to **all employees** of the school including the Headteacher. It does not apply to self-employed staff, support staff who are still in their probationary period, contractors, external consultants, agency staff or governors.
- 2.3 For the avoidance of doubt, in this policy any reference to a "**school working day**" will have the following meaning: -
 - (a) **School Support Staff:** -any day during an academic year when a school is normally open for educational purposes or when staff are in attendance for training purposes, and
 - (i) in the case of staff contracted to work during term time only, **excluding** any day which falls on a Bank Holiday or within school holiday periods, and
 - (ii) in the case of staff contracted to work all year round, excluding any day which falls on a Bank Holiday but **including** any day which fall within school holiday periods.
 - (b) **School Teaching Staff:** - any day during an academic year when a school is normally open for educational purposes or when staff are in attendance for training purposes but **excluding** any day which falls on a Bank Holiday or within school holiday periods.
- 2.4 Any reference in this policy to a "**school working week**" will have the following meaning: -
 - (a) **School Support Staff:** -any week during an academic year when a school is normally open for educational purposes or when staff are in attendance for training purposes, and
 - (i) in the case of staff contracted to work during term time only, **excluding** any week which falls within school holiday periods,

- (ii) in the case of staff contracted to work all year round, **including** any week which fall within school holiday periods.

(b) School Teaching Staff: - any week during an academic year when a school is normally open for educational purposes or when staff are in attendance for training purposes but **excluding** any week which falls within school holiday periods.

- 2.5 Separate procedures or guidance exist for action and dismissals relating to misconduct; redundancy and/or reorganisation; ill health and long and short term sickness absence; termination of a fixed term contract of employment where the term of the contract expires without it being renewed; circumstances where to continue to employ an employee would involve a breach of a statutory enactment or provision and failure by an employee (support staff only) to satisfactorily complete a probationary period.
- 2.6 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 Attendance Management Policy and Procedure.
- 2.7 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.
- 2.8 In the event of capability concerns arising during the statutory induction period of a Newly Qualified Teacher (NQT), the school should follow its induction procedure which must have regard to the Statutory Guidance from the Department for Education on induction for NQTs (revised April 2018). 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, 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 in achieving and maintaining satisfactory levels of performance 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 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 who has been certified in writing by the union as having experience of/been trained in acting as a companion. Work colleagues and Trade Union representatives are not permitted to answer questions on behalf of employees, address the meeting or hearing if the employee has indicated that they do not wish them to do so or prevent the school from explaining the case. 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** of all formal meetings under this procedure.
- 3.5 Where reasonably possible and practicable, all formal meetings and hearings convened under this procedure 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 companion. Meetings and hearings will normally be held during the employee's working day.
- 3.6 Employees will be advised of their right to appeal any formal action imposed under this procedure. If an employee wishes to exercise their right of appeal they must use the appeal form attached to this procedure (**see Appendix A**).
- 3.7 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.

- 3.8 Information relating to the capability process shall remain confidential subject to safeguarding obligations. Records will be maintained in accordance with the requirements of the Data Protection Act 2018.
- 3.9 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.
- 3.10 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 Headteacher (or the Chair of Governors in cases where the Headteacher is the subject of the procedure). Where there are safeguarding concerns the action/process **must** continue and **must** be concluded.
- 3.11 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.
- 3.12 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.
- 3.13 In exceptional circumstances where the seriousness of the level of under-performance means that pupils' education and/or safety/and or the management of the school is jeopardised the timeframes within this procedure may be reduced.
- 3.14 It is important and in the interests of the school and the employee that records are kept at all stages of the formal capability process. It is not necessary to take verbatim notes but written records should accurately reflect what has been said at the meeting/hearing.

4. Authority to Act/Local Authority Rights and Obligations

4.1 The person(s) detailed below have authority to act under this procedure.

Category of employee subject to 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	Panel of three governors not previously involved	Panel of three governors not previously involved
Headteacher	Chair of 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

4.2. The school will take into account the rights and obligations of the Local Authority in relation to the matters covered by this procedure as set out below.

4.3 Where the Local Authority has any serious concerns about the performance of a **Headteacher**, it must make a written report of its concerns to the Governing Body and at the same time, send a copy of the report to the Headteacher. The Governing Body must notify the Local Authority in writing of the action it proposes to take in the light of the Local Authority's report.

4.4 The Local Authority has a statutory entitlement to send a representative to all proceedings relating to the dismissal of a **teacher** and to offer advice. If the Local Authority decides to send a representative they will be allowed to attend and any advice offered must be considered by the Governing Body or the Headteacher when reaching a decision. All decisions made by the Governing Body or Headteacher in the light of the Local Authority's advice should be fully documented.

4.5 In cases where the Governing Body or the Headteacher makes a determination that an employee employed at the school should be dismissed, the Local Authority will be notified in writing of the fact that a determination has been made and the reasons for it.

- 4.6 If the employee is employed to work solely at the school, the Local Authority must terminate the employee's contract of employment with or without notice as appropriate within **fourteen days** of the date the notification was issued by the Governing Body or by the Headteacher. If the person concerned is not employed to work solely at the school, the Local Authority must require the person to stop working at the school.

5. Appraisal

- 5.1 As part of the normal management and appraisal process, governors, Headteachers 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 school's appraisal policy / supervision arrangements and **do not** fall within the scope of this procedure.
- 5.2 If informal support within the appraisal process/supervision arrangements does not produce the required improvements within a **reasonable timescale**, the appraiser/line manager must seek advice from the Headteacher who will decide whether the matter should be dealt with under this procedure.
- 5.3 Where the matter involves the Headteacher, if the Chair of Governors is not a member of the Appraisal Panel (also known as the Headteacher Performance Management Committee/Panel) 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 and will ensure that the Local Authority is notified in appropriate cases. Advice should be sought from the school's HR provider in all cases involving the Headteacher.

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 and 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 Headteacher or other nominated senior leader is included in these discussions.
- 6.2 Where performance concerns are not resolved through **targeted support and feedback within the appraisal process**, consideration will 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 a cycle of support, a **'final review meeting'** may be arranged to review the weakness in performance and consider the evidence to reflect whether or not the appraisal process should cease and capability procedures commence. The employee, appraiser/line manager and Headteacher or Chair of governing body (where the capability of the Headteacher is in question) will be present at the final review meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a trade union representative or a colleague.
- 6.4 The person conducting the meeting may be supported and assisted by the school's HR adviser.
- 6.5 In the event that a final review meeting is held it will **not** form part of the formal capability procedure. Until that point the employee remains subject to appraisal.
- 6.6 At least **five school working days'** notice will be given for the final review meeting. The review meeting will consider:
- the evidence which has given rise to specific concerns about the employee's performance
 - the seriousness of the concerns and their impact on the performance of the school;
 - the support that has been provided to date;
 - the time for which the concerns have persisted and over which the support has been provided;
 - any degree of improvement that has been achieved and whether or not this has been sustained;
 - the extent to which the employee has shown insight and engaged with the support provided through the appraisal process;
 - any mitigating factors.
- 6.7 Once these matters have been considered, the headteacher will confirm the decision in writing, normally within **five school working days**.

6.8 The decision will be **either** to continue with appraisal procedure **or** that the employee's performance will be managed under the capability procedure and they will be invited to a **formal capability meeting**.

7. Formal Stage One

Capability meeting

7.1 The employee should be invited to the **capability meeting** which represents formal entry into the capability procedure. The meeting will be conducted by the Headteacher or other nominated senior leader (or the Chair of Governors where matters concern the Headteacher).

7.2 At least **five school working days'** notice of the capability meeting should be given to the employee. The notification should be in writing and will include:

- the time and place of the meeting;
- details of who will be attending the meeting;
- an outline of the performance concerns;
- details of the possible outcomes of the meeting;
- confirmation of the employee's right to be accompanied;
- 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 his/her performance to date.

7.5 The person conducting the meeting on behalf of the school may be supported and assisted by the school's HR adviser.

Outcome of capability meeting

7.6 At the conclusion of the capability meeting, a decision will be taken in relation to the way forward. The person conducting the meeting on behalf of the school may adjourn the meeting briefly to consider his/her decision which may be one of the following:-

- a) there are insufficient grounds to pursue the matter through the capability procedure and therefore formal action under the capability procedure should end and any remaining concerns will be addressed through the appraisal or informal support process;
- b) the performance concerns are as a result of misconduct or ill health and therefore action under the capability procedure should end and the appropriate school procedure applied;

- c) further investigations are necessary, additional information is required or further time is required to consider all the information and evidence before a decision is made. The meeting may be adjourned in these cases - the adjournment should not normally be for more than **ten school working days**. Once the capability meeting is reconvened, a decision should be made in accordance with a, b, d or e;
- d) A first written warning should be issued (see clause 7.7 below);
- e) A final written warning should be issued (see clauses 7.7 and 7.9 below). Final written warnings will normally only be issued in very serious/exceptional cases at this stage in the procedure. HR advice should be taken before a final written warning is issued.

7.7 Where a decision is taken to issue a written warning (first or final), the person conducting the meeting on behalf of the school will: -

- identify the employee's professional shortcomings or the standards not being met;
- give clear guidance on the improved standards required of the employee;
- explain any support that will be available to help improve the employee's performance;
- set out a timetable for improvement and an explanation of how performance will be monitored and reviewed depending on the circumstances;
- confirm their decision to issue the employee with a first or final written warning and make clear that a failure to improve could lead to dismissal.

7.8 When confirming the employee's professional shortcomings/performance concerns and the agreed targets and support to be provided by the school, the person conducting the meeting on behalf of the school will have regard to 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;
- 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 focussed 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 support that will be made available to help the employee improve their performance should 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 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 timetable of the formal monitoring and review period will be detailed as will the date and time of the formal 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.

7.9 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 pupils' education and/or safety/wellbeing and/or the management of the school is jeopardised;
- where there has been a lack of co-operation with the process;
- where a further serious deterioration in performance has been identified.

7.10 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.

7.11 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.

7.12 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.

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

First monitoring and review period

- 7.14 The first monitoring and review period will start immediately following the capability meeting. The purpose of the monitoring and review period is to provide every reasonable opportunity for monitoring, support and improvement.
- 7.15 Monitoring, evaluation, feedback, guidance and support will take place during the monitoring and 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 provided.
- 7.16 Where monitoring takes place through lesson observations, the observations will consist of announced and unannounced visits.

First review meeting

- 7.17 A review meeting will be held at the end of the first monitoring and review period in line with the agreed timescale. At least **five school working days'** notice of the first review meeting will be given to the employee. The notice should be confirmed in writing and should include:
- the time and place of the review meeting;
 - details of who will be attending the review meeting;
 - confirmation of the employee's right to be accompanied;
 - confirmation of the performance concerns that are to be reviewed;
 - any documentation to be considered at the review meeting (with copies provided);
 - details of the possible outcomes of the meeting.
- 7.18 The meeting will be conducted by the Headteacher or other appropriate senior leader who may be supported and assisted by the school's HR adviser.
- 7.19 The purpose of the review meeting is to consider the evidence gathered throughout the first monitoring and review period. Any evidence presented and any representations from the employee will be considered before a decision is made. The employee's performance will be assessed focussing on the extent to which improvements have been made within the monitoring and review period in relation to the targets for improvement and success criteria.
- 7.20 The outcome of the first review meeting may be: -
- a) the employee has reached an acceptable standard of performance and no further action is required under the formal capability process. In this case, the capability procedure will cease and the appraisal process will re-start. The employee will 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 previously taken;

- b) some progress has been made and there is confidence that there will be further progress. If this is the case, the first 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. If the first monitoring and review period is extended, this will not normally be for longer than **four school working weeks**. At the end of the extended monitoring and review period a further review meeting will be convened and a decision will be taken in accordance with a, c or d;
- c) there has been no or insufficient improvement in performance during the first monitoring and review period in which case the employee will be informed that the matter will progress to **Formal Stage Two** and a **final written warning** will be issued to the employee. The employee will be advised of the information detailed in clause 7.7 above and will be advised that a failure to achieve an acceptable standard following a second monitoring and review period may result in their dismissal. The arrangements for the second monitoring and review period will be explained and confirmed to the employee including the timescale for improvement and any support which will continue. Details of when the second review meeting will take place will also be confirmed as will the procedure and time limits for appeal;
- d) if a final written warning has already been issued to the employee and there has been insufficient or no improvement in performance during the first monitoring and review period, the employee will be informed that the matter will progress immediately to a **capability hearing** in accordance with **Formal Stage Three** of this procedure. Formal Stage Two will be bypassed.

8. Formal Stage Two

Second monitoring and review period

- 8.1 The provisions of clauses 7.14 to 7.16 also apply in relation to the second monitoring and review period. The second monitoring and review period will last for a **maximum of six school working weeks** and will start immediately following the outcome of the first review meeting. It will comprise regular observations, monitoring and evaluation of performance and the provision of guidance and support.

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 provisions of clauses 7.17 to 7.19 also apply to the second review meeting.
- 8.4 The purpose of the second review meeting is to consider the evidence gathered through the second monitoring and review period. A decision on the way forward will be made after all the facts, evidence and any representations made by the employee have been fully considered. The person conducting the meeting on behalf of the school may adjourn the meeting to consider his/her decision based on all the available information and evidence.

8.5 The outcome of the second review meeting may be: -

- a) the employee has reached an acceptable standard of performance and no further action is required under the formal capability process. In this case the capability procedure will cease and the appraisal process will re-start. The employee will 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 any action previously taken;
- b) some progress has been made and there is confidence that there will be further progress. If this is the case, the second 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 also be given to any further targeted support that can be provided. The extended second monitoring and review period will normally last for no longer than **four school working weeks**. At the end of the extended second monitoring and review period a further review meeting will be convened and a decision will be taken in accordance with a, or c;
- c) There has been no or insufficient improvement in performance during the second monitoring and review period in which case the employee will be informed that the matter will progress to a **capability hearing** under **Formal Stage Three** of this procedure. The employee will also be informed that at the hearing, the person conducting the case on behalf of the school will make a recommendation that the employee should be dismissed on the grounds of capability.

9. Formal Stage Three

Capability hearing

- 9.1 The employee will be given **ten school working days'** notice of the date of the capability hearing which will follow the procedure/format detailed in **Appendix B**.
- 9.2 The Hearing Officer(s) will have authority to act as detailed in clause 4 of this procedure and may request the assistance of a Clerk/Adviser to help coordinate the arrangements for the hearing and to provide advice on the case including advice on procedure.
- 9.3 The person chairing the hearing or the Clerk/Adviser on their behalf will advise the employee of the following: -
 - the purpose, time and place of the hearing;
 - their right to be accompanied at the hearing;
 - details of who will be attending the hearing;
 - the requirement, at least **five school working days** before the hearing, to provide the Clerk/Adviser with copies of all the documentation/evidence they intend to present to the Hearing Officer(s) at the hearing;

- 9.4 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);
- 9.5 The person presenting the case on behalf of the school may be supported and assisted by the school's HR adviser; and
- 9.6 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 Capability hearing

- 9.7 Following presentations from both parties, the Hearing Officer(s) will adjourn the hearing to consider all the available evidence and any mitigating circumstances before making a decision. The decision may be as follows: -
- no further action be taken;
 - the employee should be given a further opportunity to improve performance and a further monitoring and review period should be set with a clear timetable and recommendations including any guidelines for improvement;
 - a determination that the employee should be dismissed (with appropriate contractual notice) on the grounds of capability;
 - (in the case of support staff only) another post should be offered as an alternative to dismissal. An alternative post can only be offered if the school has confirmed that an alternative position is available. The alternative post may be at a lower level of responsibility and grade/salary and may be more appropriate to the employee's skills and capability.
- 9.8 The decision of the Hearing Officer(s) will be confirmed to the employee, in writing, within **five school working days** of the date of the hearing and the employee will be advised of their right to appeal.
- 9.9 In community, voluntary controlled, community special or maintained nursery schools where the Hearing Officer(s) determine(s) that the employee should be dismissed, the Local Authority must be notified of the decision and the reasons for it. The Local Authority must dismiss the employee within fourteen days of the date of the notification.

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 warning or against a decision to dismiss them under this procedure.

- 10.2 The appeal hearing will be heard by the person or persons who have authority to hear the appeal as detailed in clause 4 of this procedure. Depending on the decision being appealed and the circumstances of the case, this will be the Headteacher or a panel of three governors. Where this is a panel of three Governors the panel will be referred to as the Appeals Committee. The procedure and the format for appeals will be as set out in **Appendix C**.
- 10.3 The Headteacher or the Appeals Committee may request the assistance of a Clerk/Adviser to help coordinate the appeal and to provide advice on the case including advice on procedure.
- 10.4 An employee who wishes to appeal must do so by completing and returning the appeal form at **Appendix A**.
- 10.5 When lodging an appeal, the employee must 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.
- 10.6 The employee must ensure that there is information/evidence available to substantiate the grounds for appeal and may only present evidence that is directly relevant to the grounds of appeal.
- 10.7 The Headteacher/Chair of the Appeals Committee (or the Clerk/Adviser) will write to the employee at least **ten school working days** before the appeal hearing confirming: -
- the date, time and location of the appeal hearing;
 - details of who will be hearing the appeal;
 - the employee's right to be accompanied.
- 10.8 At least **five school working days** prior to the appeal hearing, both parties must submit to the Headteacher/Chair of the Appeals Committee (or the Clerk/Adviser) copies of any reports, written submissions or other supporting documentation or evidence which they wish to be considered at the appeal hearing. No "new" documents may be presented by either party at the appeal hearing.
- 10.9 The representations on behalf of the school at the appeal hearing will normally be presented by the person who decided the outcome of the relevant formal stage in the capability procedure. If the decision maker was a panel of governors, the Chair of the panel will make the representations on behalf of the school.

- 10.10 The outcome of the appeal hearing will be confirmed to the employee in writing normally within **five school working days** of the date of the appeal hearing.
- 10.11 The Headteacher/Appeals Committee may confirm or overturn the decision being appealed and may make recommendations. The decision of the Headteacher/Appeals Committee is final. **There is no further right of appeal.**
- 10.12 In community, voluntary controlled, community special or maintained nursery schools the Local Authority should be advised of the outcome of the appeal hearing and any appropriate action to be undertaken
- 10.13 A postponement of an appeal hearing 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 an appeal 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.

Appendix A – Appeal form

Please complete this form in full if you have been issued with a warning (first or final) or been dismissed on the grounds 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 person identified on the letter advising you of the decision you are appealing. You must do this **within 10 school working days** of the date of the letter advising you of the outcome.

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

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

In all cases, you must give full details of your reasons for your appeal. If you are appealing on the grounds 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 around the grounds of appeal and therefore will not be a review of all the circumstances and in the case of a hearing will not be a full rehearing of the case.

If you wish to apply for a full rehearing of your case you must provide detailed reasons for your request in the space below.

My reasons for applying for a full rehearing of my case are as follows (continue on a separate sheet if necessary): *only complete if a full rehearing is being requested.*

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 they must read it and/or have it read to them before they sign it.

Signature of Employee:	
Signature of Representative:	
Date:	

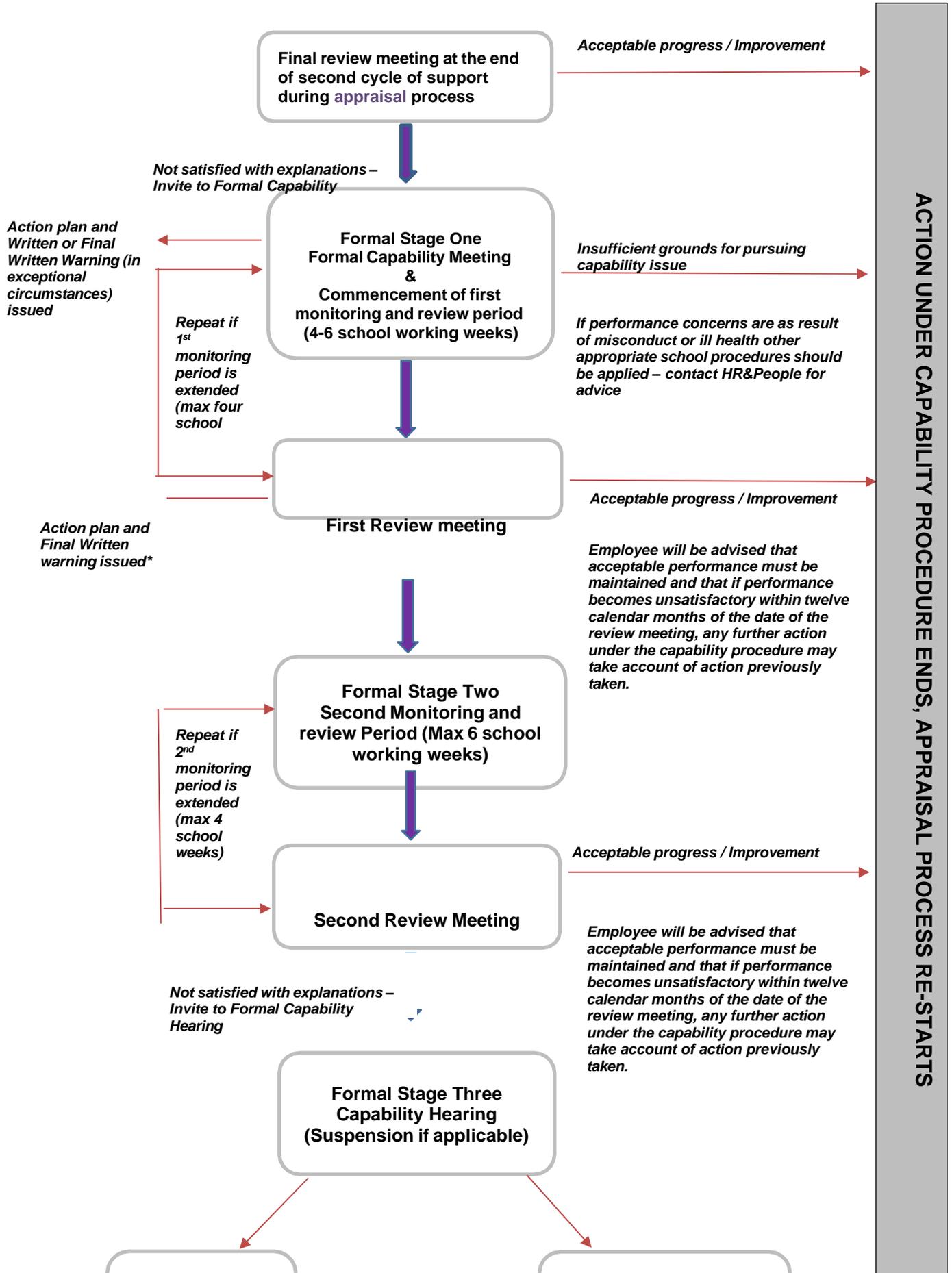
Appendix B - Conduct of Capability Hearing

- 1 The Hearing Officer(s) or the Clerk/Adviser will introduce all the parties present.
- 2 The person presenting the case on behalf of the school (“the school”) assisted by the school’s HR adviser will present the school’s case in the presence of the employee and their companion. The school will call any witnesses.
- 3 The employee and/or their companion will have the opportunity to ask questions of the school and witnesses
- 4 The Hearing Officer(s) will have the opportunity to ask questions of the school 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 their companion will put the employee’s case in the presence of the school/HR Adviser. The employee and/or their companion will call any witnesses.
- 7 The school/HR Adviser will have the opportunity to ask questions of the employee and any witnesses.
- 8 The Hearing Officer(s) will have the opportunity to ask questions of the employee and their witnesses.
- 9 The witnesses called by the employee will leave the hearing when they have given their evidence and answered all questions.
- 10 The school/HR adviser will have the opportunity to sum up the school’s case. The employee and/or their 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 Hearing Officer(s) will continue their deliberations. The decision will then be notified to the employee and/or their companion within **five school working days** of the date of the capability hearing.

Appendix C - Conduct of Appeal Hearing

- 1 The Headteacher or the Chair of the Appeals Committee or the Clerk/Adviser will introduce all the parties present.
- 2 The employee and/or their companion will put the employee's case in the presence of the person who made the formal decision being appealed (the decision maker"). In the case of a governing body panel being the decision maker, the Chair of the panel will take on that role. The decision maker may be assisted by an HR adviser. The employee and/or their companion may call any witnesses.
- 3 The decision maker will have the opportunity to ask questions of the employee and any witnesses.
- 4 The Headteacher/Appeals Committee will have the opportunity to ask questions of the employee and any witnesses.
- 5 The witnesses called by the employee will leave the hearing when they have given their evidence and answered all questions.
- 6 The decision maker/HR Adviser will present the school's case in the presence of the employee and their companion. The decision maker/HR Adviser may call witnesses.
- 7 The employee and/or their companion will have the opportunity to ask questions of the decision maker and witnesses on the evidence given.
- 8 The Headteacher/Appeals Committee will have the opportunity to ask questions of the decision maker 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 their companion will have the opportunity to sum up the employee's case. The decision maker/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 Headteacher/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 Headteacher/Appeals Committee is able to reach a decision within a reasonable time, both parties and representatives will be recalled and the Headteacher /Chair of the Appeals Committee (or the Clerk/Adviser) will inform the parties of the decision. The hearing will end at this point.
- 14 If the Headteacher/ Appeals Committee are **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 Headteacher/ Appeals Committee will continue their deliberations. 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.

Appendix D - Flowchart



**Dismissal with
Notice**

**Alternative
Employment within the
school (support staff
only)**