



**South Manchester
Learning Trust**

Trust Wide Policy

Staff Capability Procedure Policy

Date of Board Approval:

3 July 2018

Review:

Summer 2021

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A. INTRODUCTION

- 1) This procedure is intended to apply to all school employed staff including teachers. It excludes agency workers, volunteers and staff within their probationary or NQT period (there is a separate procedure for addressing issues within the NQT or probationary period).
- 2) This procedure is intended to provide a guide as to the steps that should normally be followed by the Headteacher in respect of an employee who fails to reach or to maintain the required standards of professional competence. In cases concerning the professional competence of the Headteacher this procedure will be initiated by the Chair of Governors.
- 2) Employees will receive constructive feedback on their performance throughout the year and as soon as practicable, this will normally be done through the appraisal process operated within the school. Feedback will highlight particular areas of strength as well as any areas that need attention. Where there are concerns about any aspects of the employee's performance the person giving feedback will meet the employee to:
 - give clear feedback to the employee about the nature and seriousness of the concerns;
 - give the employee the opportunity to comment and discuss the concerns;
 - agree any school based INSET, which could include the opportunity to observe good practice;
 - help with classroom management, lesson planning, organising materials, record keeping, etc;
 - enlist the help and guidance of LA advisory/consultancy staff;
 - appropriate external INSET, which could include the opportunity to visit other appropriate schools to observe good practice;
 - any other support identified that will be provide to help to address specific concerns;
- 3) When progress is reviewed, if the appraiser is satisfied that the employee has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed though that process.
- 4) If the appraiser is not satisfied with progress, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the professional competence and capability procedure, and they will be invited to a formal capability meeting.

B. FORMAL CAPABILITY PROCESS

- 1) The Headteacher, or his/her representative, will invite the employee, by giving at least 5 working days notice, to a formal capability meeting. If the concerns relate to a Headteacher the Chair of Governors will convene the meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the

time and place of the meeting; and will advise the employee of their right to be accompanied by a trade union representative, or a work colleague.

This meeting is intended to establish the facts and will be conducted by the Headteacher/ Chair of Governors, or his/her representative. The meeting allows the employee, accompanied by a trade union representative, or work colleague, if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

- 2) Following the meeting the Headteacher/Chair of Governors, or his/her representative will, after full discussion with the employee, prepare and put into action a formal written programme.
- 3) The formal written programme will set out: -
 - The areas of the employee's performance which require improvement;
 - targets for the required level of improvement within each area;
 - the timescale within which those targets must be achieved;
 - any support required to help the improvements to be achieved;
 - the process by which those targets are to be reviewed.
- 4) The timescale adopted will be in accordance with the seriousness of the capability concerns of the employee. Consideration will be given to whether the problem is a specific or broader professional difficulty, whether it is of very recent concern, or spanning a longer period of time. Normally the period given for improvement will be no more than six working weeks after the date of entry into the formal procedure
- 5) A review period will follow, during which time a programme of support will be implemented. At the end of the review period determined to demonstrate that the required standard has been reached, the Headteacher/Chair of Governors, or his/her representative, will arrange a review meeting with the employee to discuss progress towards the required improvements targets. If improvement has not been achieved the employee will be written to informing them of this and a period of up to six working weeks further review will be instigated with further targets set, support offered and monitoring.
- 6) At the end of this further review period, if the required standard of performance has been reached the employee will be informed accordingly and that no further action, other than regular appraisal reviews will follow, unless otherwise agreed.
- 7) An employee who does not meet the required targets within the prescribed time scale after the review period stage, having received support and assistance, or who demonstrates an unwillingness to co-operate at any stage will become the subject of a Competence and Capability Hearing.

- 8) The Headteacher/Chair of Governors, or his/her representative, in consultation with those members of the Governing Body who have power to make appointments, may consider offering the employee a different balance of duties, if available within the school, and explain to the employee that this may be the only alternative to a Competence and Capability Hearing before the Governing Body. Such employment does not necessarily have to be equivalent employment, particularly in the case of a promoted employee who may be offered a post at a lower level.

C. ILL-HEALTH

- 1) If issues of ill-health arise during the course of the professional competence process and last for longer than 1 week, or involve 3 or more periods of absence, the matter may be referred to the Authority's Occupational Health Physician for prognosis relating to the individual's health and fitness to cooperate with this process.
- 2) Short absences should not delay any part of the process. Reasonable steps should be made to enable the employee to attend review meetings, but where the employee is unable to attend, the meeting may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the process. If the employee does not attend the review meetings due to absence a full account of the evaluation should be provided in a letter to the individual confirming the decision taken.
- 3) Where the absence becomes longer term and there is no foreseeable return to work date in the near future, then the situation should be managed in line with the Schools Attendance Management Procedure.
- 4) For those schools that use Trafford's Occupational Health Service counselling can be offered to employees who are going through this process.

D. COMPETENCE AND CAPABILITY HEARING

- 1) The Competence and Capability Hearing will be before a Committee consisting of at least three members of the school's Governing Body (where this number is not reasonably practicable it can be reduced to two), not including the Headteacher/Chair of Governors, or his/her nominated representative, (the Hearing will be held in accordance with the attached Schedule – Appendix 1). The membership of the Committee will be drawn from members of the Governing Body who, as far as is reasonably practicable, have not been involved in any related proceedings.
- 2) Following the Competence and Capability Hearing the decision of the Committee shall be one of the following: -

To find that the work performance problem has/has not improved, in whole or in part;
and: -

- resolve that no further action be taken; or
- extend the formal stage of the procedure if the committee feels there is still the possibility that satisfactory improvement may shortly occur;

- determine that the employee cease to work at the school.
- 3) The decision of the Committee will be confirmed by the Clerk to the Governing Body, to the employee in writing, and a copy sent to Human Resources who will keep a copy of the employee's personal file. The employee will be informed in this notification of his/her right to appeal.

E. APPEAL HEARING

- 1) The employee will have a right of appeal against a decision of the Competence and Capability Committee, to be lodged with the Clerk to the Governing Body within 5 working days, to an Appeals Committee, to be drawn from members of the Governing Body (the Appeal Hearing will be conducted in accordance with the attached Schedule).
- 2) The Appeals Committee, having heard the appeal may:-
- resolve that no further action be taken under the procedure; or
 - substitute a lesser penalty, i.e. extend the formal stage of the procedure, where the committee feels that satisfactory improvement may shortly occur;
 - confirm the dismissal.

Appendix 1 – SCHEDULE FOR HEARINGS

PREAMBLE

1. This Schedule sets out the procedures to be followed at a hearing or an appeal hearing held as part of the Competence and Capability Procedure for employees within schools with delegated powers of Local Management.
2. Arrangements for a hearing/appeal hearing before a Committee of the Governing Body will be made by the Clerk to the Governing Body. Human Resources may attend all meetings of such Committees in order to offer advice for the Committee's consideration. Arrangements for a hearing/appeal hearing will normally be made within ten working days of the appeal being lodged or notice of the hearing being given.

PROCEDURE

3. At a hearing/appeal hearing an employee may be represented by a trade union representative, or a work colleague.
4. The Clerk will arrange a suitable date for the hearing/appeal and will give at least ten working days notice of the date to both parties.
5. Copies of all documents to be referred to at the hearing/appeal hearing, and lists of all witnesses to be called, will be submitted to the Clerk, and to the other party, no later than five working days before the date arranged for the hearing/appeal hearing. The Clerk will distribute copies of the documents and lists of witnesses to the members of the Committee.
6. At the hearing/appeal hearing the Headteacher/Chair of Governors, or his/her representative will outline the management case in the presence of the employee concerned, and will have the right to call witnesses. The employee, or his/her representative will have the opportunity to ask questions of the Headteacher/Nominated Person/Chair of Governors, or any witnesses called.
7. The employee or his /her representative will respond to the management case in the presence of the Headteacher/Chair of Governors, or his/her nominated representative and will have the right to call witnesses. The Headteacher//Chair of Governors, or his/her nominated representative will have the opportunity to ask questions of the employee, his/her representative, or any witnesses called.
8. The Committee may ask questions at any time of either party or any witnesses called.
9. The Headteacher/Chair of Governors, his/her nominated representative and the employee, or his/her representative, will have the opportunity to sum up their case, if they so wish.
10. Following the summing up both parties will withdraw. The Committee will deliberate in private, only recalling the Headteacher/Chair of Governors, or his/her nominated representative and the employee, and their representatives, to clarify points of uncertainty in the evidence already given. If such a recall is necessary, both parties

will return to the hearing/appeal hearing, even if only one party is concerned with the point raised.

11. The Committee will announce its decision, with reasons, to both parties, either personally, or in writing. If personally, the decision will be confirmed in writing by the Clerk within five working days.
12. During the hearing/appeal hearing the decision of the Chair of the Committee as to procedure and which matters are of relevance to the proceedings will be final.

**CAPABILITY PROCEDURE FOR SCHOOLS
FLOWCHART**

Appraisal process

Agree targets and standards of performance to be achieved
Agree any support required to achieve required performance
Provide constructive feedback on performance
Discuss future monitoring
Highlight poor performance, where applicable and where no improvement in performance is achieved move to the Schools Capability Procedure

**Capability Procedure
Capability Meeting**

Arrange formal meeting – give 5 days notice
Right to TU representative or work colleague
Formal written programme setting out areas for improvement
Agree period of monitoring (no more than 6 working weeks)
Confirm the outcome of the meeting in writing

Invite to review meeting to discuss progress

Review Meeting

Arrange a formal meeting – give 5 days notice
Right to TU representative or work colleague
Confirm whether required standard has been met, assess against Action Plan
If standard required has been met, revert back to normal appraisal process.
If still concerns, agree any further support required and set further review period (no more than 6 working weeks)

Confirm the outcome of the meeting in writing

**If employee still not meeting required standards
Convene a Competence and Capability Hearing**

Invite to Hearing - give 10 days notice
Panel of governors hear both sides
Employee notified of decision in writing within 5 working days and given right of appeal

**If employee meets required standard
refer back to normal appraisal process**

Appeal Hearing

Invite to hearing – give 10 days notice
Panel of governors hear both sides and make decision (panel members not previously involved)
Decision in writing within 5 working days
This is the final stage and there is no further right of appeal

Invite to Formal Capability Meeting

Date

Name

Address

Dear

Capability Procedure – Formal Capability Meeting

In accordance with the Schools Capability Procedure, a meeting has been arranged for you with myself, and (*name*), Human Resources on (*date*) at (*time*) at (*place*).

The purpose of the meeting is to discuss concerns around your performance in the following areas:

-
-
-

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

Please confirm your attendance at the above meeting with (*name*), as soon as possible.

If you have any queries regarding the above please do not hesitate to contact me.

Yours sincerely

.....
Manager

Invite to Formal Capability Hearing

Date

Name
Address

Dear

Capability Procedure – Formal Capability Hearing

In accordance with the Schools Capability Procedure, a formal hearing has been arranged for you on *(date)* at *(time)* at *(place)*. The Hearing Panel will be chaired by *(name)* and will also include *(name)* and *(name)*; supported by *(name)*, Human Resources.

The purpose of the hearing is to discuss your continued shortfall in performance in the following areas:

-
-
-

Your progress against the agreed Formal Action Plan will be considered at this hearing and I must inform you that should your performance continue to be considered below the standard required, your employment with the School may be terminated.

You are entitled to be accompanied by a Trade Union representative or a work colleague at the hearing, if you wish.

Please confirm your attendance at the above meeting with *(name)*, as soon as possible.

Yours sincerely

.....
Senior Manager

Outcome of Formal Capability Meeting

Date

Name
Address

Dear

Capability Procedure – Outcome of Formal Capability Meeting

I write with reference to our meeting of (*date*).

You were represented at the meeting by (*insert name of representative*). (*name*), Human Resources was also present.

The purpose of the meeting was to discuss concerns around your performance in the following areas:

-
-
-

I enclose a copy of the notes taken at the meeting and a copy of the agreed Formal Action Plan. We agreed the timescale for improvement was (*insert*).

If you feel you are in need of any further support and guidance in addition to what was agreed, please let me know.

Your performance will be reviewed formally in (*insert*) time but I will meet with you on a (*insert*) basis in order to provide any necessary support.

Please note that failure to improve your performance to an acceptable standard, during the timescale agreed, may result in moving to the next stage of the Capability Procedure.

Yours sincerely

.....
Manager

Hearing - Outcome – where the outcome is action other than dismissal

Date

Name
Address

Dear

Capability Procedure – Outcome of Formal Capability Hearing

I write with reference to the above named hearing of *(date)*. Those present at the hearing were *(names)* Hearing Panel; supported by *(name)*, Human Resources. The case was presented by *(name)*, Manager, supported by *(name)* Human Resources. You were represented at the hearing by *(name)*.

The purpose of the hearing was to discuss the shortfall in your performance in the following areas:

-
-
-

(insert the decision of the panel)

You have the right of appeal against this decision. Any appeal should be in writing, and addressed to the Clerk to the Chair of Governors, *(location)*, and should be submitted within 20 working days.

Yours sincerely

.....
Senior Manager

Hearing - Outcome – where the outcome is dismissal

Date

Name

Address

Dear

Capability Procedure – Outcome of Formal Capability Hearing

I write with reference to the above named hearing of *(date)*.

Those present at the hearing were *(names)* Hearing Panel; supported by *(name)*, Human Resources. The case was presented by *(name)*, Manager, supported by *(name)* Human Resources. You were represented at the hearing by *(name)*.

The purpose of the hearing was to discuss the shortfall in your performance in the following areas:

-
-
-

Unfortunately, despite the support and guidance given to you throughout the process you have failed to meet the standards required of you and I am, therefore, issuing you with *(notice period)* notice that your employment with *(School name)* will be terminated on *(date)*.

You have the right of appeal against this decision. Any appeal should be in writing, and addressed to the Clerk to the Chair of Governors, *(address)* within 20 working days.

Yours sincerely

.....

Senior Manager