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## **CAPABILITY POLICY FOR [ACADEMY NAME]**

**The policy to optimise staff performance  
and manage capability issues**

**January 2012**

**This Policy was adopted by:**

**The Governing Body of the Academy**

**on 14<sup>th</sup> May 2012**

### **Delegated responsibilities**

The Governing Body has agreed to delegate the responsibility as follows:-

#### **Responsibility for Formal Capability Hearings which may lead to dismissal:**

To the Principal	Yes	Date agreed 14.05.12
To the First Committee of Governors	Yes	Date agreed 14.05.12

#### **Responsibility for suspension of employees:**

To the Principal	Yes	Date agreed 14.05.12
To the Chair of Governors	Yes	Date agreed 14.05.12

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If the Academy purchases human resources' advice and support from the Devon County Council , senior managers can seek further advice from the DCC HR Service at: [schoolspersonnelhelpline@devon.gov.uk](mailto:schoolspersonnelhelpline@devon.gov.uk) or by telephone on 01392 384567.

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## **A. INTRODUCTION AND PURPOSE**

### **A.1. Responsibility for Optimising Staff Performance and Managing Capability**

It is the responsibility of the Governing Body and the Principal to take appropriate steps to ensure that employees achieve and maintain the standard of performance required of them. The Governing Body and Principal are responsible for ensuring that employees are aware of this Policy and are made aware of any concerns regarding their capability to do their jobs.

### **A.2. Consultation**

This Policy is provided, following consultation with trade unions/professional associations, for the Governing Body to consider for adoption. Should the Governing Body wish to make changes to this Policy, the required consultation must be undertaken with the County Officers of the recognised trade unions/professional associations.

This Policy supersedes all previous capability policies.

### **A.3. Legislative Base**

This Policy takes into account the provisions of the Employment Act 2008, the revised ACAS Code of Practice for Disciplinary and Grievance April 2009 and the Equality Act 2010.

### **A.4. Aim of this Policy**

This Policy is to support and manage employees in a way that is fair, effective and consistent and in accordance with good management practice during periods where there are concerns about their capability and performance. The aim of this Policy is to provide clear guidance on addressing capability concerns to effect a sustained improvement in the employee's performance through a supportive approach.

### **A.5. Coverage**

This Policy applies to all employees at the Academy, including the Principal and will be made available to every employee through the Academy's internal communication systems.

For ease of reference, if "(Chair of Governors)" is following the word 'Principal', the Chair of Governors or nominated representative will manage this policy in relation to issues concerning the Principal.

### **A.6. Contractual Provisions**

Individual employees have a contractual responsibility to carry out the requirements of their job to a satisfactory standard and, if necessary, to take any steps required to improve their performance.

### **A.7. Timings**

Time limits are included in this Policy to try to resolve issues and secure performance improvement as quickly as possible. However, they may be varied by mutual agreement.

The Policy makes reference to a number of 'days' within which employees and/or managers are required to provide notice of meetings, appeal against decisions, etc. A 'day' is defined as any Monday to Friday excluding public holidays as defined by ACAS.

#### **A.8. Release of Information**

If requested, copies of confidential documents may be disclosed under Data Protection or Freedom of Information Act procedures. In all such instances, the issue of an individual's safety will be paramount.

### **B. EQUALITY**

This Policy is based on best practice to ensure a consistent and effective approach. The Governing Body and the Principal (Chair of Governors) have a particular responsibility to ensure that the processes are managed fairly, equitably, objectively and must not discriminate either directly or indirectly on the grounds of a person's race, sex, gender reassignment, sexual orientation, marriage or civil partnership, disability, age, pregnancy and maternity or religion or belief.

### **C. POLICY**

#### **C.1. Application of the Policy**

This Policy:

- a) will be applied in accordance with the Equality Act 2010;
- b) will be consistently and fairly applied to employees across the Academy;
- c) will be conducted with respect for the confidentiality of employees and in accordance with the Data Protection Act 1998;
- d) will be based on open communication between employees and their managers; and
- e) is explicit about the responsibilities for all involved.

#### **C.2. Duty to Act**

The Governing Body values the contribution of all its employees in the provision of education for pupils at the Academy. The Governing Body has a duty to provide an effective education to the pupils and to minimise disruption to effective learning.

Whilst recognising that each employee may need different training and support at different times during his/her career, the Governing Body is committed to ensuring that each employee performs effectively and at the appropriate level in line with his/her contract. This will be achieved through:

- a) clarity of the required standards of performance;
- b) monitoring the performance of employees within the Academy; and
- c) supporting and managing employees at work.

The Governing Body must be informed by the Principal (Chair of Governors) if the Academy has an employee who is failing to meet the performance standards

for his/her role and is being managed under this Policy. The Governing Body should not be informed who the employee is or of any details.

### **C.3. Authority to Take Action**

#### **C.3.1. Designated Manager**

Where there are concerns about an employee's capability and performance and action is to be taken in accordance with this Policy, a Designated Manager should be appointed by the Principal (Chair of Governors) to deal with the matter. In some cases, it will be the Principal (Chair of Governors) that carries out this role.

#### **C.3.2. Formal Capability Hearings**

Formal Capability Hearings may be conducted by the Principal in accordance with his/her delegated responsibilities except where he/she has had significant previous involvement in the matters being considered and/or is the Designated Manager, in which case the First Committee of Governors will conduct the Formal Capability Hearing.

#### **C.3.3. Appeal Hearings**

Appeal Hearings will be conducted by a Committee of Governors who have had no previous involvement in the matters being considered.

### **C.4. Definition of lack of capability**

Lack of capability is defined as circumstances in which an employee fails consistently to perform her/his duties to professionally acceptable standards and in accordance with her/his contract of employment.

Lack of capability and misconduct should not be confused.

Lack of capability is where the employee does not reach the required standard of performance expected by the Academy and/or does not reach the required professional standards for the job.

Misconduct is where the employee's conduct and/or behaviour is inappropriate and inconsistent with the standards expected by the Academy and/or the appropriate professional body.

In some circumstances, there may be a combination of lack of capability and misconduct. The manager should identify the issues clearly to determine whether one or both policies should be invoked.

Examples of lack of capability include but are not limited to:

- a) consistently failing to meet reasonable deadlines for tasks, projects, reports, etc;
- b) regularly producing work which is sub-standard, inaccurate, badly presented, or poorly organised;
- c) failing to carry out effectively and consistently key areas of job responsibility, such as marking pupils' work;

- d) being unable to maintain standards of behaviour by pupils and/or contribute to the maintenance of good order throughout the Academy, particularly in the classroom;
- e) failing to consistently meet the appropriate professional standard e.g. Post Threshold Standards;
- f) failure to ensure pupils progress;
- g) failure to provide accurate, detailed and appropriate information to the Governing Body;
- h) failing to provide effective leadership and management in the Academy (applicable to Principals and School Managers).

Not meeting acceptable standards of performance may be related to a number of different factors, for example the need for:

- a) more specific training;
- b) further development of knowledge or skills;
- c) clear and explicit goals and targets;
- d) regular and focused supervision;
- e) a reasonable workload;
- f) effective working relationships with colleagues.

The inability to meet acceptable standards of performance may also be influenced by factors such as:

- a) poor health, wellbeing and/or a disability;
- b) personal problems;
- c) the employee's inability to accept that his/her performance does not meet the required standards.

Where there are issues that the employee feels are impacting upon his/her performance, the employee is expected to be pro-active and inform his/her manager of his/her concerns in a timely manner. The employee should take action to resolve these difficulties before performance is affected to the extent that s/he is unable to meet his/her contractual obligations and action needs to be taken by the school manager under this Policy.

## **D. CONFIDENTIALITY**

### **D.1. Need for Confidentiality**

Any matter being dealt with during the application of this Policy must be treated as strictly confidential except where statutory obligations exist, when disclosure is necessary or for the effective management of the Academy.

All parties, including the employee to whom this Policy is being applied, will be expected to maintain confidentiality at all times. If other employees or Governors of the Academy become involved in the application of this Policy they will be advised and will be expected to maintain confidentiality.

Disclosure of any information to any third party will only be made in accordance with this Policy and/or for the purpose of obtaining appropriate professional advice and/or as may be required by law.

Breaches of confidentiality will be taken very seriously and may result in action being taken.

The Designated Manager must not discuss any matters related to the application of this Policy with any party not involved in the case, with the exception of seeking advice or clarification from others who they believe are suitably qualified to provide that advice or clarification.

## **E. RECORD KEEPING STANDARDS**

A written record must be made of all interviews and meetings held during the application of this Policy. Those involved in each meeting will be provided with a copy of any records made.

The Designated Manager will ensure there is a full, comprehensive case file of the process which should include all statements, records and evidence.

All records will be retained confidentially, securely and in accordance with the Data Protection Act (1998).

## **F. GENERAL PRINCIPLES**

### **F.1. Being Accompanied at Hearings**

An employee has a statutory right to be accompanied at any Hearing where dismissal may be considered. To invoke that right an employee must make a reasonable request to be accompanied by either a representative from a recognised trade union/professional association or an appropriate work colleague.

It would not normally be reasonable for an employee to be accompanied by a work colleague or trade union/professional association representative whose presence would prejudice the hearing and/or to be accompanied by a work colleague or trade union/professional association representative from a remote geographical location if someone suitable and willing was available on site.

### **F.2. Being Accompanied at Meetings**

Although no statutory requirement exists, an employee who is the subject of this Policy will be permitted to be accompanied by either a representative from a recognised trade union/professional association or an appropriate work colleague. The work colleague or trade union/professional association representative must have no involvement in the circumstances and must make him/herself available appropriately to avoid delay to the process.

### **F.3. Support for the Employee during the application of this Policy**

Consideration must be given to any support the employee may need to reach the required standards in his/her performance.

The employee will be encouraged to contact his/her trade union/professional association for advice and support at the earliest stage.

#### **F.4. Trade Union/Professional Association representatives**

The same standards of performance apply to employees of the Academy who are also trade union/professional association representatives. Prior to any action being taken under this Policy against an employee who is an accredited trade union/professional association representative the circumstances will be discussed with a paid official nominated for such purposes by the trade union/professional association concerned.

#### **F.5. Ofsted Assessment of a Teacher's Performance**

The assessment of a teacher's performance as a result of an Ofsted inspection cannot be used exclusively to invoke this Policy. Such information may be used as evidence alongside other evidence the Principal (Chair of Governors) has about an employee's performance.

#### **F.6. Professional Standards for Teachers**

The standards of performance expected for teachers are detailed in the Statutory Professional Standards in School Teachers' Pay and Conditions Document 2011. In the case of Academies, the use of these Standards will depend on the specific arrangements of the Academy. However, if the Academy is working to these Standards, any teacher that fails to consistently meet the appropriate Professional Standards can be subject to the provisions of this Policy.

#### **F.7. Dismissal on the Grounds of Capability**

Ultimately should the employee fail to meet the Professional Standards or requirements of his/her role, dismissal on the grounds of capability may occur. It is recommended that advice is sought from the DCC HR Service (refer to A2 and F3) or the Academy's own legal support service in advance.

### **G. COMPLAINTS RELATED TO THE IMPLEMENTATION OF THIS POLICY**

If the employee has a complaint relating to the application of this Policy it should be raised either in writing or during a meeting, at the Formal Capability Hearing or at the Appeal Hearing. Complaints relating to the process or people involved in the process will usually be handled whilst the process continues, either by integrating the complaint into the capability proceedings or by managing it as a separate concurrent matter.

On rare occasions, depending on the circumstances, it may be appropriate to suspend this process for a short period whilst the complaint can be considered. It may also be appropriate to consider whether another manager or Governor in the Academy or, in exceptional cases, another appropriate independent person should be brought in to review the complaint raised by the employee.

The employee should raise complaints whilst the procedure is being applied. If there is a valid reason why the complaint could not be raised during the process and it is raised after the process has been completed it will be dealt with as a grievance. However this mechanism cannot be used in order to have the original capability issue reconsidered if the reason for the complaint was known about while this Policy was being followed.

Where the employee is repeating a complaint which has been made, considered and rejected in the course of the capability process, the Principal (Chair of Governors) will refuse to consider the matter again under the Grievance Policy.

## **H. COMPLAINTS UNRELATED TO THE IMPLEMENTATION OF THIS POLICY**

If, during the application of this Policy, the employee raises a grievance unrelated to the application of this Policy, it will be dealt with under the Grievance Policy. Where this is the case, as the matter is unrelated, there will be no need to put the capability process on hold. The capability and grievance issues can be dealt with in parallel.

There may be occasions where other HR processes are being applied to the employee e.g. managing his/her absence. In all but the most exceptional circumstances, the application of this Policy should run concurrently with the application of any other Policy.

## **I. STATUTORY REPORTING OBLIGATIONS**

### **Referral to the General Teaching Council (GTC) or equivalent body**

Until 31 March 2012 where a teacher is dismissed for incompetence or resigns where s/he could have been dismissed or considered for dismissal on the grounds of capability, s/he will only be referred to the GTC where the case is likely to meet the criteria for future barring and where there is the prospect of completing the case prior to the GTC's abolition on 31 March 2012. From 31 March 2012, the Teaching Agency will not look at cases of incompetence but will only consider cases involving misconduct.

## **J. 'CAPABILITY FACTORS'**

During the course of this Policy consideration must be given to the following 'capability factors' as this will help to determine what action is taken to support the employee to meet the required standards.

- a) What are the specific issues giving cause for concern and what facts, evidence or examples of work evidence this? and/or
- b) Is the employee's performance having an adverse impact on:
  - i) the running of the Academy ? and/or
  - ii) the delivery of education? and/or
  - iii) the learning of the pupils? and/or
- c) Is the employee's poor performance having an impact on the morale or the workload of his/her colleagues? and/or
- d) Has the employee been set clear tasks, standards or goals? and/or
- e) Has the employee taken personal steps to ensure his/her performance meets the required standard for example by seeking advice and guidance, identifying training needs, etc? and/or
- f) Are there any temporary problems inside or outside work that may be affecting the employees' work? and/or
- g) Is the employee suffering from health problems and/or are they likely to be covered by the Equality Act 2010? If so, has the Academy's Occupational Health Adviser been consulted and all reasonable steps been taken to consider and provide any reasonable adjustment(s) and support and has a reasonable period of time been allowed for the employee to adjust to any changes? and/or

- h) Has the employee received ongoing training and appropriate support to enable him/her to develop professionally and meet the required standards? and/or
- i) Is the health and safety of the pupils at risk due to the actions of the employee? and/or
- j) Is the employee's performance meeting the requirements of the job description?

## **K. REVIEWING THE NEED FOR ACTION UNDER THE CAPABILITY POLICY**

### **K.1. Immediate Line Manager's Responsibilities**

The immediate line manager should have taken steps to bring any concerns regarding an employee's performance to his/her attention and put in place informal action to support the employee to improve his/her performance to reach the required standards before consideration is given to following this Policy. Where the manager determines that there has been no significant improvement towards reaching the required standards following the support in place during informal action, s/he should establish with the Principal (Chair of Governors) whether s/he can act as the Designated Manager in following this Policy. If it is determined that the manager cannot act as the Designated Manager, the Principal (Chair of Governors) will appoint a Designated Manager.

### **K.2. Designated Manager's Responsibilities**

The Designated Manager must be confident that appropriate actions have been taken informally so that the employee has had the opportunity to improve his/her performance to reach the required standards before the Capability Policy is invoked. The Designated Manager must prepare a written report in consultation with the line manager (if different from the Designated Manager), taking into account the following points:

- a) the nature of the performance concerns and the evidence supporting those concerns;
- b) the implications the employee's poor performance has on the Academy;
- c) the reasons given by the employee for his/her poor performance (if any);
- d) what support, training, adjustments and/or other actions have been taken to support the employee to improve his/her performance to reach the required standards;
- e) what impact those support measures have had on performance;
- f) the outcome of consideration of the 'capability factors' (see section J);
- g) the timescale over which informal action has been taken;
- h) what informal meetings and other communications have taken place with the employee, what was agreed and what the outcomes were;
- i) whether the employee has been advised that a failure to meet the required standards could lead to formal action being taken in accordance with this Policy and that the matter has been referred to the Designated Manager for a decision.

**K.3.** If there are concerns about an employee's performance that are so severe that his/her continued presence in the Academy could have a seriously detrimental effect on the health, safety and wellbeing and education of the pupils, this should be included within the report and consideration given to section L of this policy.

#### **K.4. Fast track assessment period due to serious concerns**

If there are circumstances of serious concern, where:

- a) a teacher's classroom control is so poor that effective teaching cannot take place and/or
- b) where pupils fail to progress in that teacher's lessons and/or
- c) where effective leadership of the Academy is in serious doubt,

this should be evidenced within the report and consideration given to an assessment period not exceeding 4 weeks (known as a 'fast track' assessment period) will be considered as part of the First Formal Stage.

#### **K.5. Dismissal on the grounds of irredeemable incompetence**

In exceptional circumstances, cases can arise in which the inadequacy of the performance is so extreme that there is irredeemable incapability.

#### **K.6. Considering the way forward**

Following consideration of the report, the Designated Manager, with the Principal (Chair of Governors) should determine whether to:

- take no further action; or
- continue with informal action for a specified time period; or
- invoke the Capability Policy.

#### **K.7. Communicating the decision**

If the decision is to invoke this Policy, the employee must be provided with a copy of the report, a copy of this Policy and the reasons for the decision. (as in M.1.) within 10 days of the employee being informed of the decision and requesting the employee's attendance at a Formal Capability Meeting.

### **L. MAKING DECISIONS ABOUT WHETHER AN EMPLOYEE REMAINS AWAY FROM WORK**

#### **L.1. Designated Manager's responsibilities**

If the concerns about an employee's performance are so severe that his/her continued presence in the Academy could have a seriously detrimental effect on the health, safety and wellbeing of the pupils the matter should be referred to the Principal (Chair of Governors). The Delegated Manager should prepare details of the concerns which have led to the consideration that the employee should remain away from work. The employee should also be informed of the referral to the Principal (Chair of Governors) and the reasons for it and should be asked if s/he wishes to indicate any circumstances which have led to these concerns. The employee should also be advised that s/he should be aware that these concerns may result in a Formal Capability Hearing being held, which may impact upon his/her continued employment.

L.2. The Principal (Chair of Governors) will consider the evidence provided by the Designated Manager.

#### **L.3. Head teacher (Chair of Governors) responsibilities**

The Principal (Chair of Governors) will consider whether it is appropriate for the employee to remain in the Academy and/or whether one of the following courses of action is necessary:

- a) To temporarily transfer the employee to alternative duties;

- b) To direct the employee to remain at home on normal pay, pending a decision to suspend;
- c) To suspend the employee on normal pay. A decision to suspend can only be taken by the Principal (Chair of Governors) depending on the delegation agreed by the Governing Body.

- L.4. If the Principal (Chair of Governors) determines, having considered all the evidence, that the employee should remain away from work, the employee will be informed by the Principal (Chair of Governors) that s/he should remain away from work and told the reasons for this determination. The employee will be informed that the matter will be referred to a Formal Capability Hearing for consideration by a Committee of Governors, in line with Section N of this Policy.
- L.5. The Principal (Chair of Governors) will write to the employee within 7 days to confirm the action to be taken and, if appropriate, that the matter will be referred to a Committee of Governors for consideration which may impact upon her/his continued employment.
- L.6. The Principal (Chair of Governors) will liaise with the Clerk to Governors to set up a Formal Capability Hearing (see section N) if appropriate.

## **M. FIRST FORMAL STAGE – FORMAL CAPABILITY MEETING**

### **M.1. Communicating the decision**

If the decision is to invoke this Policy, the employee must be provided with a copy of the report, a copy of this Policy and the reasons for the decision. (as in K.7.) within 10 days of the employee being informed of the decision and requesting the employee's attendance at a Formal Capability Meeting.

M.2. At the Formal Capability Meeting the Designated Manager must:

- tell the employee the areas of concern about his/her performance and outline exactly what standards are required;
- give the employee the opportunity to respond and to detail any difficulties preventing him/her meeting the required standards;
- carefully consider the employee's response;
- inform the employee about how his/her performance will be formally reviewed, with clear and measurable targets being given. A review period will be set and will include teaching observation and assessment if the employee is a teacher or a teaching assistant working directly with pupils;
- consider if the circumstances are so serious where:
  1. a teacher's classroom control is so poor that effective teaching cannot take place and/or
  2. pupils fail to progress in that teacher's lessons and/or
  3. effective leadership of the Academy is in serious doubt.
- consider whether a 'fast track' assessment period not exceeding four weeks is necessary and if so, invoke the assessment and explain the reasons for this decision (This should be detailed in the report);
- outline the support to be provided and the process of evaluation;
- consider identifying a mentor to support the employee (the mentor should have no involvement in the monitoring);

- inform the employee that if s/he fails to meet the required standards of performance, within the review period, with the support, that s/he should be aware that it may result in a Formal Capability Hearing being held, which may impact upon his/her continuing employment.

### **Formal Support**

- M.3. At the Formal Capability Meeting with the Designated Manager, the employee should ensure that any issues that may be impacting upon his/her performance are raised with the Designated Manager. The Designated Manager can therefore consider, in conjunction with the employee, whether there is any support or other action that can be taken to assist him/her in achieving the required standards.
- M.4. The employee should take all steps to attempt to improve performance to the required standards and ensure that any agreed actions relating to support are implemented prior to the Formal Review Meeting. If the employee has any concerns with that support, these should be raised with the Designated Manager in a timely manner.
- M.5. Following the Formal Capability Meeting the Designated Manager will write to the employee within 7 days to confirm:
- the specific performance issues which need to be addressed in order to achieve the required standards;
  - details of the support to be provided, including information on the Counselling Service;
  - the timescale over which the required standards of performance are to be achieved, how performance is to be monitored and evaluated and how feedback will be provided to the employee during that time, including if applicable, that the 'fast track' assessment period has been invoked and the reasons for this decision;
  - the date of the Formal Review Meeting;
  - the potential implications for the employee's continuing employment, should the required standards of performance not be achieved.

Notes of the Formal Capability Meeting will be included with the letter. Any particular points which the employee wishes to record at this stage should be included in the record of the meeting.

- M.6. The review period set will be dependent upon the factors involved in the situation. However, it is likely to be a minimum of six school weeks to a maximum of a term (unless the 'fast track' assessment period has been invoked, in which case it would be for four weeks or less (paragraph K.4.)). During the review period the employee's performance should be regularly monitored and feedback provided at agreed intervals. A record of the monitoring and feedback should be taken, with a copy provided to the employee.
- M.7. At the end of the review period, the Designated Manager will meet with the employee again to formally review performance. At the Formal Review Meeting the Designated Manager will ensure that:
- there is a discussion about whether or not the required standards are being met;

- if performance has improved, this is acknowledged;
- if there are continuing concerns about performance this is evidenced;
- the employee is given the opportunity to respond;
- careful consideration is given to the employee's response to the concerns before determining the way forward;
- the performance standards expected from the employee with reasons for them are reaffirmed;
- any difficulties that the employee may have which are impacting upon his/her performance are discussed;
- the support that has already been put in place is confirmed and there is a discussion to determine whether any additional support may be required to assist the employee securing the standards required.

Following careful consideration of all the points raised and actions taken to date, the Designated Manager will determine whether:

- no further action is required, as performance has improved to meet the required standards;
- as there has been significant performance improvement, but required standards have still not been met, a further Formal Support Period of six weeks be held (not applicable where the 'fast track' process has been invoked);
- there has been no or insignificant improvement towards meeting the required standards and therefore the matter should be referred to the Principal (First Committee of the Governing Body), who may make decisions regarding the employee's future employment.

M.8. Following the Formal Review Meeting the Designated Manager will write to the employee within 7 days to confirm:

- what was discussed at the meeting, including the specific issues which need to be addressed in order to achieve required standards, the support that has been provided and what actions have been taken to date, both before and after this policy was invoked, to support the employee to meet the required standards;
- what further action will be taken;
- if no further action is required at this stage as performance has improved to the required standard, this should be acknowledged. The employee must be encouraged to maintain that improvement and advised that should similar concerns about his/her performance arise within the next 12 months, the procedure will be started again at the stage which has been reached;
- if a further Formal Review Period has been agreed, the timescale for this review and support period should be confirmed and the employee should be advised that if there is insufficient improvement to meet the required standards in performance by the end of that period, the matter may then be referred to the Principal (First Committee of the Governing Body);
- if the matter is being referred to a Formal Capability Hearing before the Principal (First Committee of the Governing Body), the employee should be informed that a report will be provided to the Principal (First Committee of Governors) and the employee. The employee will be given a copy at least 10 days before the Formal Capability Hearing;

- a record of the meeting will be included with the letter. Any particular points which the employee wishes to record at this stage should be included in the record of the meeting.

M.9. The Designated Manager will submit a written report to the Principal (First Committee of the Governing Body) and the employee, which includes information on:

- the employee's role within the Academy and how long s/he has been performing that role;
- the specific concerns regarding the employee's performance. All evidence should be appended to the report;
- the implications of the employee's performance on the running of the Academy, the delivery of education and/or the learning of the pupils;
- what actions have been taken both before and after this Policy was invoked to support the employee to secure performance improvement to the required standards (include dates and append any letters/meeting notes to the report);
- what support has been provided to the employee (append any evidence to the report).

## **N. SECOND FORMAL STAGE - THE FORMAL CAPABILITY HEARING**

N.1. The Clerk to Governors will write to the employee requiring his/her attendance at a Formal Capability Hearing. At least 10 days' notice of the Hearing must be given. The letter should include:

- the date, time and place of the Hearing;
- the names of the person(s) who will hear the case;
- the names of any witnesses to be called;
- the Designated Manager's report and notification of who will present the management case (if it is not the Designated Manager);
- copies of any written material and/or any evidence that is relevant;
- the fact that the Hearing may result in the determination that the employee shall have his/her employment at the Academy terminated;
- the fact that the Hearing may take place in the employee's absence if s/he fails to attend without a satisfactory explanation
- if s/he is unable to attend through illness s/he should provide a medical certificate and arrange representation at the Hearing and/or provide a written submission to the Formal Capability Hearing;
- the employee's right to be represented (see section F.1.);
- a copy of this Policy;
- that the employee should confirm to the Principal (Clerk to the Governors) that s/he will be attending and who his/her representative will be;
- that any documentation the employee wishes to submit should be provided to the Clerk to the Governors at least 4 days before the Hearing date.

A copy of the letter, report and any employee submissions should be sent to the person(s) conducting the Formal Capability Hearing.

N.2. The Formal Capability Hearing should be conducted in accordance with employment law and good employee relations practice. Advice may be sought from the DCC HR Service.

## **Formal Capability Hearing**

N.3. The Designated Manager with the Principal, as appropriate, will attend the Formal Capability Hearing to present his/her report to the person(s) conducting the Formal Capability Hearing and answer any questions from the panel and/or employee.

N.4. The employee should attend the Formal Capability Hearing and provide any supporting documentation to the Principal/First Committee in accordance with the timescales. If the employee is not able to attend due to ill health, s/he can arrange representation at the Formal Capability Hearing and provide a written submission.

N.5. At the Formal Capability Hearing the employee can respond to the Designated Manager's report and present his/her case and will answer any questions from the Principal/First Committee and/or the Designated Manager.

N.6. Following presentation of all the evidence and when the Principal (First Committee) is satisfied that there is sufficient evidence to make a decision, the Formal Capability Hearing will be adjourned. All parties, except the person(s) conducting the Formal Conduct Hearing and their HR Adviser, if in attendance, should leave the meeting room.

## **N.7. Decision Making**

The person(s) conducting the Formal Capability Hearing will consider all the evidence presented.

The Committee should consider mitigating circumstances when making a decision on the outcome of the Formal Capability Hearing.

## **N.8. Potential Outcomes:**

The person(s) conducting the Formal Capability Hearing may decide on any of the following outcomes:-

- **No Formal Action**

If it is felt that the employee's performance has improved to the required standard. The employee will be encouraged to maintain that improvement and advised that should similar concerns arise about his/her performance within the next 12 months, the procedure will be started again at the stage which has been reached.

- **Final Written Warning**

To issue the employee with a final written warning, advising that the stage has been reached where it will be impossible for the employee to continue his/her employment unless his/her performance improves to the required standard. The Principal/First Committee will determine what formal support will continue and over what time period. The employee should be warned that failure to improve to meet the required standards within that specified time period could lead to a further Formal Capability Hearing being held, which could lead to his/her employment being terminated.

- **Dismissal with Notice**

To dismiss the employee with notice as s/he is incapable of performing the job for which s/he has been employed. Depending upon the circumstances it may be appropriate to consider whether alternative work of a nature more suited to the employee's capability should be sought during the notice period.

- **Other Appropriate Action**

Any other appropriate action in keeping with the spirit of this Policy (to secure performance improvement) that has due regard to the financial means of the Academy and does not impact on the provision of education to the pupils or the health, safety and/or well-being of the employee and his/her colleagues, e.g. withholding an annual increment; offering a demoted post if there is an appropriate vacancy.

Where the employee has been asked to remain away from work (in line with section L) a decision will need to be made about whether this should continue, bearing in mind what further action is to be taken.

N.9. The Formal Capability Hearing will be reconvened to inform the employee of the decision.

N.10. The decision should be confirmed in writing to the employee within 7 days of the Hearing. If the decision has been to recommend dismissal, the Academy will issue notice of dismissal.

N.11. Where the Principal/First Committee determines that there will be a further review period with further formal support provided, the employee must ensure that s/he makes every effort to comply fully with that formal support to attempt to secure the required standards.

N.12. Where the employee decides to appeal against the decision of the Formal Capability Hearing s/he must ensure that s/he complies with the requirements and timescales set out in this Policy.

N.13 Reporting Obligations must be considered and adhered to.

## **P. THIRD FORMAL STAGE - THE APPEAL HEARING**

P.1. Where an employee feels that the decision of a Formal Capability Hearing is wrong or unjust, the employee has the right to appeal against the decision.

P.2. The employee must appeal in writing within 5 days of receipt of the letter confirming the outcome of the Formal Capability Hearing. The employee must specify the grounds for the appeal in writing.

P.3. The employee has the right to be accompanied by a recognised trade union or professional association representative or appropriate work colleague at the Appeal Hearing.

P.4. **Appeal Hearing Coordination and Notification**

The Appeal Hearing will be conducted by an Appeal Committee, consisting of three governors with no previous involvement, and should be convened at the earliest convenient date.

P.5. The employee should be given 10 days notice of the date of the Appeal Hearing.

**P.6. All information and documents**

All information and documentation that is to be presented at the Appeal Hearing by either the employee or the Chair of the Formal Capability Hearing must be exchanged at least 4 days prior to the Appeal Hearing.

The Chair of the Appeal Committee will determine if the Designated Manager and/or Principal should be called as a witness.

**P.7. Conducting Appeal Hearing**

The Appeal Hearing should be conducted in accordance with employment law and good employee relations practice, with the employee presenting his/her grounds for appeal first. Advice may be sought from the DCC HR Service.

The appeal may either be a review of the disciplinary sanction or the process followed. It is not a re-hearing of the case.

The employee will attend the Appeal Hearing to present his/her appeal to the Appeal Committee and answer any questions from the Appeal Committee, their HR Adviser (if present), and the Chair of the Formal Capability Hearing.

The Chair of the Formal Capability Hearing will attend the Appeal Hearing to respond to the employee's appeal and answer any questions from the Appeal Committee, their HR Adviser (if present) and/or the employee. An HR Adviser may accompany the Chair of the Formal Conduct Hearing and may ask questions.

If the Designated Manager is called as a witness, s/he will attend the Appeal Hearing to answer any questions from any of the parties. S/he can attend the whole hearing if all parties agree.

If the employee is unable to attend the Appeal Hearing without a good reason, the Committee will decide whether to proceed in his/her absence. The employee may send a representative on his/her behalf and/or provide a written statement.

**P.8. Decision Making**

Once all the relevant issues have been thoroughly explored, the Appeal Committee will adjourn with its HR Adviser (if present) to consider its decision.

The Appeal committee may make one of the following determinations,

- To uphold the appeal if it is determined that the previous decision was not soundly based and to determine what further actions should take place.
- To conclude that significant procedural irregularities have occurred and make a recommendation to rectify the situation.
- To conclude that the penalty was too harsh and downgrade it.

- To conclude a further period of support, monitoring and review is required
- To reject the appeal and uphold the previous decision of the Formal Capability Hearing.

If the appeal is successful and the employee has been instructed to remain away from work or has been suspended in line with section L, a decision will be made about whether this should continue and/or arrangements will be made for his/her return to his/her substantive post at the Academy.

The Appeal Committee must decide if there are any Reporting Obligations required and should action these.

#### **P.9. Communicating the Decision**

The Chair of the Appeal Committee will communicate the decision verbally at the conclusion of the Appeal Hearing unless otherwise agreed.

The decision will be confirmed in writing to the employee within 7 days of the Appeal Hearing and informed that the decision is final.

Where there is a determination to uphold the appeal against dismissal, the Chair of Governors will rescind the notice of dismissal.