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THE BROW COMMUNITY PRIMARY SCHOOL POLICY DOCUMENT

CAPABILITY OF STAFF

Author	Title	Date Authorised	Review Schedule (Years)	Review Date
Governors	4. Capability Of Staff	Nov 2019	3	Nov 2022

We very much value all our staff who work very hard in school to ensure the best outcomes for all our pupils. This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers and staff, including the Headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance. It clearly states the standards expected of our teachers and staff.

It also sets out the arrangements that will apply when a teacher or any member of staff fall below the levels of competence that are expected of them.

➤ [Click here to read the full policy](#)

Controlled Document No. 4

Halton Model policy for dealing with Performance Capability issues (TEACHERS)

The Governing Board of The Brow Community Primary School adopted this policy on 25th February 2015, and it was reviewed on 26th November 2019.

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1 Introduction

- 1.1 Revised Appraisal arrangements come into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which gives schools the option to adopt the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). The 2006 Regulations continue to apply to any performance management cycle which was in progress on 1 September 2012, unless the governing body or local authority decides to end that cycle early and to begin a new appraisal period starting on or after that date.

The Performance Management/Appraisal Regulations apply to teachers in all maintained, Voluntary Controlled, Voluntary Aided, Foundation, Faith and Academy schools and unattached teachers employed by the local authority, in each case where they are employed for one term or more.

This model **capability** policy applies only to teachers, including head teachers.

It is good practice for schools to consult staff on their Performance Management/Appraisal and capability policies.

Reference is made throughout this model policy to *Performance Management/Appraisal** please amend as applicable.

2. Objective

To encourage and assist an employee to achieve and maintain an acceptable standard of performance, within appropriate time scales. The procedure provides a fair and consistent method of dealing with alleged failures to achieve the expected standard.

3 Model Policy Application

3.1 The Capability Procedure will apply to teachers in all maintained schools and unattached teachers employed by the local authority, in each case where they are employed for one term or more. It shall not apply to teachers in Academy Schools.

3.2 Those schools who have agreed a Performance Management/Appraisal policy in accordance with the *Education (School Teachers Appraisal) (England) Regulations 2012*) incorporating an informal stage of capability which has been exhausted may move straight to Stage Two of this procedure for the purpose of implementing formal performance capability.

3.3 Advice can be sought at any stage of the procedure from the School's HR Adviser.

3.4 It does not apply in circumstances where a teacher is not registered with the Teaching Agency or fails to gain Qualified Teacher Status. These matters will be dealt with in accordance with the disciplinary procedure

3.5 The Headteacher is responsible for the application of the formal procedure but may delegate some stages of the procedure to other members of the management team or to an advisor from outside the school.

3.6 In the case of the Headteacher being subject to the Capability Procedure, the Chair of Governors will be responsible for its application but may delegate some stages to an advisor from outside the school.

3.7 The decision to recommend dismissal of staff to the Governing Body should always be taken by the Headteacher (or Chair of Governors if head subject to procedure).

STAGE 1

4. NORMAL SUPERVISORY PROCESS – INFORMAL STAGE *(Only applicable for those schools who have not incorporated this stage in their agreed Performance Management/Appraisal policy in accordance with the Education (School Teachers Appraisal) (England) Regulations 2012).*

For those schools who have this stage will not apply and therefore may progress to Stage Two.

- 4.1 Initial problems will be dealt with in the normal supervisory/management process and will not form part of the formal procedure. Line Managers/Head Teachers will monitor any issues and ensure that they do not go on indefinitely. There is no right of appeal at the informal stage of the procedure.
- 4.2 Once problems have been identified initial discussions should be arranged between the Line Manager/Head Teachers and the employee.

These should include;

- A clear explanation of the area/s causing concern ensuring that the employee is aware of the standards that are required of them
 - Discussing possible causes/problems/difficulties that may impact on the performance of their duties
 - Identifying reasonable practical help/assistance/training to improve the level of performance (this may include advice from the school's HR provider, or referral to Occupational Health provider)
 - Reasonable alterations to the duties which are consistent with the needs of the service but do not change the overall nature of the job
 - Providing close supervision and monitoring
 - Setting targets, programmes of action and a timescale for improvement
 - Encouragement and assistance to Improve
 - Training in proportion to issue
 - Ensuring the employee is aware that failure to reach the required standards could ultimately result in the termination of the Contract of Employment.
 - Reviewing progress with the employee in accordance with the agreed timescales
- 4.3 This list is neither exclusive nor exhaustive, individual cases will be dealt with on their merits. As an example, in the case of long-term ill health, it may be because of the illness that the normal supervisory process would not be applicable and there would be a move directly into the formal stages of the procedure. However whatever action is taken, this should not come as a surprise to the employee.
- 4.4 For clarity the Informal Stage applies to performance issues (before applying Stage Two below)
- 4.5 A record of the discussions with the individual must be kept and a copy given to the employee. If towards the end of the agreed review period it appears that there has been insufficient improvement against the targets set the employee should be advised that there may be a need to move into the formal procedure and that they may wish to contact their trade union representative or a fellow employee of their

choice. At this stage the employee should be given a copy of the Capability Procedure.

STAGE 2

5 Formal Performance Capability Procedure

- 5.1 This procedure applies only to teachers or head teachers about whose performance there are serious concerns that Informal Stage One has been unable to address.
- 5.2 At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher 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
 - advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

6 Formal Capability Meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or head teacher (for other teachers)

- 6.1 The meeting allows the teacher, accompanied by a trade union representative or 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.
- 6.2 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.
- 6.3 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.
- 6.4 In other cases, the meeting will continue. During the Formal Capability Meeting, the person conducting the meeting will:
- identify the professional shortcomings (for example which of the standards expected of teachers are not being met)
 - give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*);
 - explain any support that will be available to help the teacher improve their performance;
 - Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the

individual case but in straightforward cases could be five week. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and

- Warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

6.5 The decision regarding the appropriate warning to be issued will be made only after representations have been made and evidence submitted has been considered.

6.6 The decision on which level of warning to issue will depend on the seriousness of the problem, for example, a final written warning could be issued in exceptional circumstances where the performance issues were considered to be having a serious adverse effect on the education or health and safety of the pupils. This would need to be strongly evidenced.

6.7 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

7 Monitoring and review period following a Formal Capability Meeting

7.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

8. Formal Review Meeting

8.1 As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a trade union official, colleague, or a trade union representative who has been certified by their union as being competent.

8.2 If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

- 8.3 As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The teacher will be invited to a decision meeting.

9 Decision Meeting

- 9.1 As with Formal Capability Meetings and Formal Review Meetings, at least five (*or insert alternative*) working days' notice will be given and the notification will give:
- details of the time and place of the meeting
 - Will advise the teacher of their right to be accompanied by a trade union representative, colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 9.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.
- 9.3 If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at the school.
- 9.4 The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.
- 9.5 It is good practice for schools to appoint an appropriate panel of Governors in any potential dismissal case.

In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

Before the decision to dismiss is made, the school will discuss the matter with the local authority (*N.B. this is not a legal requirement but schools may find it helpful*).

10 Decision to dismiss

- * The power to dismiss staff in this school rests with the Governing Body.
- * The power to dismiss staff in this school has been delegated *to the head teacher/to one or more governors/to one or more governors acting with the head teacher (delete as appropriate)*.

(NB: the two options above are available only to Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).

**delete as applicable*

- * The power to decide that members of staff should no longer work at this school rests with the Governing Body.

- * The power to decide that members of staff should no longer work at this school has been delegated to *the head teacher/to one or more governors/to one or more governors acting with the head teacher. (delete as appropriate).*

(NB: these two options are available only to Community, Voluntary Controlled, Community Special, and Maintained Nursery schools,

**delete as applicable*

11 Dismissal

- * Once the decision to dismiss has been taken, the Governing Body (*or insert details of person or people to whom the power to dismiss has been delegated*) will dismiss the teacher with notice, (*Voluntary Aided, Foundation and Foundation Special schools only*).
- * **Once the Governing Body (*or insert details of person or people to whom the power has been delegated*) has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it.**

**delete as applicable*

Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school only. (**Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only**).

12 Appeal

- 12.1 If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days (*or substitute alternative*) of the decision, setting out at the same time the grounds for appeal.
- 12.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a Trade Union Representative or colleague will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.
- 12.3 It is good practise that the appeal is dealt with impartially and by a quorum of three governors, wherever possible, who have not previously been involved in the case.
- 12.4 The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

13 Points to Note

- 13.1 The allocation of the responsibilities, between senior managers, Headteacher and Governors should be made clear and adhered to.
- 13.2 Regard should be paid to the resources available to the school.

- 13.3 It must be made clear to the teacher involved in the procedure – who is doing what – in relation to monitoring, supporting and managing the procedure.
- 13.4 If the (head) teacher resigns, once the formal procedure has commenced, then a referral to the Teaching Agency is made. Cases where the employer has ceased to use the services of teachers registered with the Teaching Agency or might have ceased to use those services had the teacher not ceased to provide them, should be referred directly to the Teaching Agency. There is a statutory duty to make a referral in the case of dismissals.
- 13.5 Throughout the procedure all relevant documentation will be available to the teacher.

14 Role of Governors

- 14.1 Governors will not normally be involved with the Capability Procedure before the formal stage, and then only in considering appeals against warnings or dismissal.
- 14.2 The exception to this will be where a Governor or Governors are involved in the Capability Procedure against a Headteacher.
- 14.3 The use of Governors to hear any grievances or appeals against warnings will be limited to ensure a sufficient number of impartial Governors remain available for any Staff Dismissal and Dismissal Appeal committees. Usually, at least three would be required for each committee.
- 14.4 Good practise is for three governors, however if this is not reasonably practicable, the number can be reduced to two. There will not be more Governors on the Staff Dismissal Committee than on the Appeal Committee.

15 Grievances

- 15.1 In exceptional circumstances, a teacher may raise a grievance about the behaviour of the Headteacher or Line manager during the course of the Capability Procedure.
- 15.2 Suspension of the Capability Procedure will only be considered where there is strong evidence that the teacher has been mistreated. In such cases, consideration will be given to bringing in another manager to deal with the Capability case and, where appropriate, the case will continue with the same timetable.

CONDUCT OF THE CAPABILITY HEARING

The procedure to be adopted at the formal capability hearing will be:

1. The hearing will be conducted by the Head teacher/Staff Dismissal Committee. They will be accompanied by a HR Adviser who was not involved in the earlier stages of the procedure.
2. The Head teacher/Staff Dismissal Committee will satisfy themselves that the employee understands the purpose of the hearing, the nature of the capability issue(s) and the possible implications arising from it.
3. The case against the employee will normally be presented by the responsible Line Manager/Headteacher (in instances involving the Head teacher this would be the Chair of Governors) who had investigated the matter or such other manager with sufficient knowledge. They will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. (If written statements or other documents are to be presented copies of these should normally be sent to the employee and their representative with the letter convening the hearing).
4. The employee and/or representative will be given the opportunity to question the presenting line manager/head teacher as well as any witnesses who have given evidence.
5. The employee or their representative will then be invited to respond to the case presented. The employee may also produce witnesses, written statements or other documents in support of their case. (Where written statements or other documents are to be presented copies should be provided to the Head teacher/Staff Dismissal Committee and presenting manager at least three working days before the hearing). Where witnesses are school employees they will be given reasonable time off with pay to attend the hearing.
6. The presenting line manager/head teacher will be given the opportunity to question the employee, their representative and any witnesses called.

7. At any stage during the hearing the Staff Dismissal Committee and the HR Adviser may ask questions of the employee, the presenting line manager/head teacher or any other such person, as they may consider appropriate in order to ascertain the facts and arguments. The formulation of views before the end of the hearing should be avoided.
8. The presenting line manager/head teacher will then be invited to make a closing statement not introducing any new material.
9. The employee or their representative will be given the opportunity to make a closing statement also without introducing any new material.
10. Both parties will withdraw to allow the Head Teacher/Staff Dismissal Committee to review and consider the evidence in conjunction with the ER Adviser. If recall of the parties is necessary to clear points of uncertainty, both parties are to return, not withstanding that only one is concerned with the point giving rise to doubt.
11. The Head Teacher/Staff Dismissal Committee will then recall both parties to inform them of the decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made within five working days of the hearing concluding. The decision should be confirmed in writing and delivered to the employee either by hand or first class post with a copy to the employee's representative.

APPEALS PROCESS

1. At each stage where a warning is issued, the (head)teacher will have the right of appeal against the warning.

Appeals will normally be restricted to considering:

- (i) the reasonableness of the decision.
- (ii) any relevant new evidence.
- (iii) any procedural irregularities.

Appeals against warnings may be heard by:

- (a) a panel of governors.

If there are insufficient members of the governing body available to form sufficient panels to hear any subsequent recommendation regarding the capability of the (head)teacher, appeals against warnings under this procedure may, exceptionally, be heard by

- (b) a senior manager at the school.
- or
- (c) an LA advisor.

The impartiality of Governors will not be compromised.

2. A (head)teacher who has been dismissed by the Staff Dismissal Committee may appeal against the decision to the Staff Dismissal Appeals Committee.
3. The (head)teacher is entitled to be accompanied at an appeal hearing by a trade union representative or work colleague. New evidence may be considered at an appeal.
4. The decision of the person(s) hearing the appeal will be confirmed in writing.

5. There will be no further appeal against this decision.

6. Where an appeal is upheld, the matter will be referred back to the Headteacher or manager to be reconsidered for further appropriate action.

7. Where monitoring is ongoing, it will not be halted by a pending appeal.

CONDUCT OF THE CAPABILITY APPEALS HEARING

The procedure to be adopted at the formal capability hearing will be:

1. The hearing will be conducted by the Staff Dismissal Appeals Committee. They will be accompanied by a HR Adviser who was not involved in the earlier stages of the procedure.
2. The Staff Dismissal Appeals Committee will satisfy themselves that the employee understands the purpose of the hearing, the nature of the capability issue(s) and the possible implications arising from it.
3. The case against the employee will normally be presented by the responsible Head teacher/Chair of the Staff Dismissal Committee who issued the initial decision. They will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. (If written statements or other documents are to be presented copies of these should normally be sent to the employee and their representative with the letter convening the hearing).
4. The employee and/or representative will be given the opportunity to question the presenting Head teacher/Chair of the Staff Dismissal Committee as well as any witnesses who have given evidence.
5. The employee or their representative will then be invited to respond to the case presented. The employee may also produce witnesses, written statements or other documents in support of their case. (Where written statements or other documents are to be presented copies should be provided to the Staff Dismissal Appeals Committee and presenting Head teacher/Chair of the Staff Dismissal Committee at least three working days before the hearing). Where witnesses are school employees they will be given reasonable time off with pay to attend the hearing.
6. The presenting Head teacher/Chair of the Staff Dismissal Committee will be given the opportunity to question the employee, their representative and any witnesses called.
7. At any stage during the hearing the Staff Dismissal Appeals Committee and the HR Adviser may ask questions of the employee, the presenting Head teacher/Chair of the Staff Dismissal Committee or any other such person, as they may consider appropriate in order to ascertain the facts and arguments. The formulation of views before the end of the hearing should be avoided.

8. The presenting Head teacher/Chair of the Staff Dismissal Committee will then be invited to make a closing statement not introducing any new material.
9. The employee or their representative will be given the opportunity to make a closing statement also without introducing any new material.
10. Both parties will withdraw to allow the Staff Dismissal Appeals Committee to review and consider the evidence in conjunction with the HR Adviser. If recall of the parties is necessary to clear points of uncertainty, both parties are to return, not withstanding that only one is concerned with the point giving rise to doubt.
12. The Staff Dismissal Appeals Committee will then recall both parties to inform them of the decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made within five working days of the hearing concluding. The decision should be confirmed in writing and delivered to the employee either by hand or first class post with a copy to the employee's representative.

UNSATISFACTORY WORK PERFORMANCE FLOW CHART

INFORMAL STAGE 1 (If applicable)

- Line Manager/Head Teacher has initial discussion with employee to explain concerns and area(s) of weakness
- Identify help/assistance/training to improve level of performance
- Agree targets, programme of action and timescale for improvement (max 6 months)
- Manager to provide close supervision and monitoring
- Record of discussions kept and a copy given to employee.
- No right of appeal at this stage



Performance improved

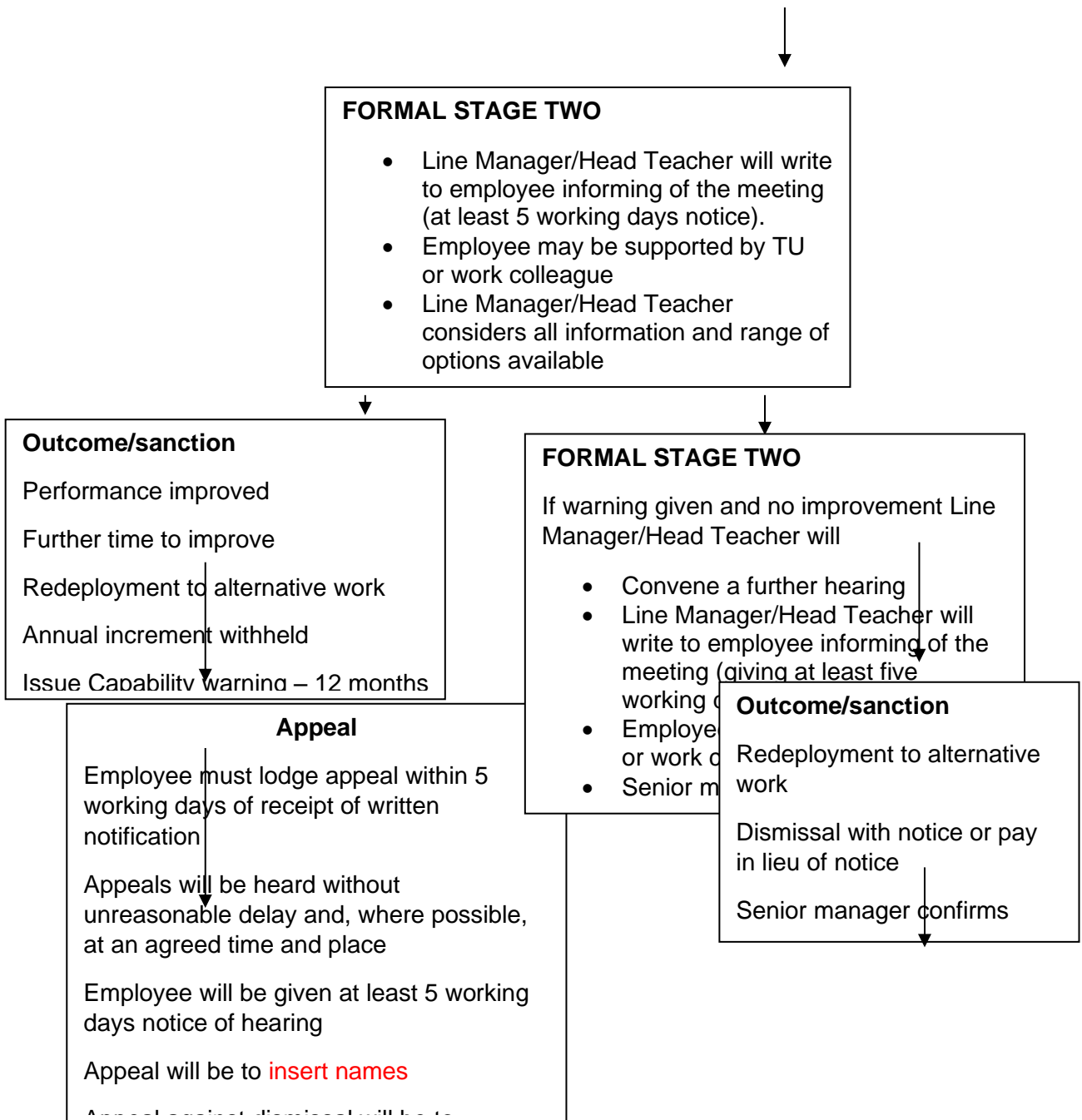
Line Manager/Head Teacher will;

- Advise the employee that no further action required
- Line Manager/Head Teacher will continue to monitor performance to ensure it is sustained
- If performance deteriorates then formal review held

Insufficient improvement in performance.

Line Manager/Head Teacher will;

- Seek advice from their HR Adviser
- Inform employee that there is need to move into formal stage two of the procedure
 - Give employee copy of Capability Policy



ACAS Code of Practice on Disciplinary and Grievance Procedures

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Definitions

Unless indicated otherwise, all references to “teacher” include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

Teacher appraisal and capability

This policy has been written in accordance with the DfE guidance dated January 2012.

Model policy for dealing with capability issues

The Governing Body of *insert name of the school* adopted this policy
on _____

It will review it in (*insert date or number of years*)

Contents

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2. Objective
3. Model Policy
 - Purpose
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School Support Staff

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Appendix A – Conduct of Capability Hearing

Appendix B – Capability Appeals Procedure

Appendix C – Unsatisfactory Work Performance Flow Chart

Appendix D – Absence Management Flow Chart – Persistent Short Term Absence

Appendix E – Absence Management Flow Chart – Long Term Sickness Absence

SCHOOL SUPPORT STAFF

PERFORMANCE CAPABILITY PROCEDURE

1. SCOPE

- 1.1 This Procedure shall apply to all employees of *insert name of school*, including temporary and part time employees. The Procedure shall not apply to employees during their probationary periods.

2. DEFINITION

- 2.1 Capability relates to an employee's skill, aptitude, health or other physical or mental aspects that affect their ability to do the job for which they are employed. It therefore deals with the following:

- **Unsatisfactory work performance (Part 1)**
- **Unsatisfactory levels of attendance, sickness absence/ill health (Part 2)**

3. OBJECTIVE

- 3.1 To encourage and assist an employee to improve their performance to a level acceptable to the organisation within the appropriate timescales.

4. PRINCIPLES

- 4.1 Capability issues must be dealt with fairly and reasonably and within the rules of natural justice. Particular sensitivity needs to be used when dealing with an employee whose ill health is affecting their performance at work. The following principles underpin this procedure:

- (a) To encourage a sensitive, imaginative, realistic and constructive approach by all involved in a capability issue, including the employee concerned.
- (b) To confirm that the responsibility for resolving capability issues rests initially with the line manager and finally with the Headteacher or Full Governing Body.
- (c) To ensure that the capability issues are dealt with efficiently, within agreed timescales and with clear outcomes.
- (d) To recognise the rights of the employee in relation to information, the opportunity to explain their position, to representation by a trade union representative or fellow employee of their choice, and the right of appeal.

- (e) To recognise the business needs of the Organisation

- (f) To recognise that if at the end of the process it is not possible to improve an employee's level of performance or attendance, continued employment cannot be guaranteed.

- (g) To confirm that if at any stage in this Procedure it becomes apparent that the matter is one of discipline rather than one of capability, it is appropriate to switch to the application of the Disciplinary Procedure.

5. NORMAL SUPERVISORY PROCESS – INFORMAL STAGE

- 5.1 Initial problems will be dealt with in the normal supervisory/management process and will not form part of the formal procedure. Line Managers/Head Teachers will monitor any issues and ensure that they do not go on indefinitely. It is anticipated that the process will not exceed a timescale of 6 months. There is no right of appeal at the informal stage of the procedure.

- 5.2 Once problems have been identified initial discussions should be arranged between the Line Manager/Head Teachers and the employee.

These should include;

- A clear explanation of the area/s of weakness causing concern ensuring that the employee is aware of the standards that are required of them
 - Discussing possible causes/problems/difficulties that may impact on the performance of their duties
 - Identifying reasonable practical help/assistance/training to improve the level of performance (this may include advice from the school's HR provider, the Disability Employment Advisor at Job Centre Plus or referral to Occupational Health)
 - Reasonable alterations to the duties which are consistent with the needs of the service but do not change the overall nature of the job
 - Providing close supervision and monitoring
 - Setting targets, programmes of action and a timescale for improvement
 - Encouragement and assistance to Improve
 - Training in proportion to issue
 - Ensuring the employee is aware that failure to reach the required standards could ultimately result in the termination of the Contract of Employment.
 - Reviewing progress with the employee in accordance with the agreed timescales
- 5.3 This list is neither exclusive nor exhaustive, individual cases will be dealt with on their merits. As an example, in the case of long-term ill health, it may

be because of the illness that the normal supervisory process would not be applicable and there would be a move directly into the formal stages of the procedure. However whatever action is taken, this should not come as a surprise to the employee.

- 5.4 For clarity the Informal Stage applies equally to performance issues (before applying part 1 below) and issues relating to unsatisfactory levels of attendance, sickness absence/ill health (before applying part 1 below)
- 5.5 A record of the discussions with the individual must be kept and a copy given to the employee. If towards the end of the agreed review period it appears that there has been insufficient improvement against the targets set the employee should be advised that there may be a need to move into the formal procedure and that they may wish to contact their trade union representative or a fellow employee of their choice. At this stage the employee should be given a copy of the Capability Procedure.

PART 1 - PERFORMANCE

6. FORMAL STAGE 1 – PERFORMANCE

- 6.1 When moving into the formal stages the advice of the school's HR Provider should be sought. In the case where a local trade union representative is to be interviewed formally on a capability issue his/her full time regional representative **must** be informed prior to the interview.
- 6.2 Where the required standard of performance has not been achieved within the Normal Supervisory Process, despite action/support being taken, the line manager/Head teacher will;
 - Notify the employee, in writing, of the formal hearing.
 - The letter will refer specifically to this Procedure and give (in addition to date, time and place) details of who will be present; full but concise details of the lack of capability or competence; the right to be accompanied by a trade union representative or fellow employee of their choice; and the right to ask individuals (to be notified to the senior manager 3 working days in advance) to give supporting evidence. Where this is required a written statement should be provided and circulated to the Hearing Officer and HR Adviser.
 - The notification will be sent out at least ten working days in advance of the hearing. An additional copy of the paperwork will be included for the individual to pass to their representative. The notification will be hand delivered to the employee or sent by first class mail.
- 6.3 The purpose of the hearing will be to hear the evidence regarding the performance of the employee, review the reasonableness of the managerial support and come

to a decision on any further action to be taken regarding the performance of the employee.

- 6.4 At the hearing the Line Manager/Head teacher will conduct the hearing in accordance with the procedure detailed in **Appendix A**. The hearing officer will receive from the Line Manager/Head teacher and any other appropriate source, details of the lack of capability, how this has been measured or assessed, training/support and assistance given, and any other relevant background information. The employee, or their representative, will have the opportunity to offer an explanation regarding the reason/s for failing to reach the required standard and be entitled to question any statements and comment generally.
- 6.5 Immediately after the final summaries the Hearing Officer will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).
- The employee has reached the required standards
 - Further time should be allowed to enable the employee to reach the required standards, (with clarification of what needs to be achieved).
 - Redeployment to alternative work (by mutual agreement and subject to there being a suitable vacancy).
 - The annual increment to be withheld because of unsatisfactory performance
 - Demotion to the bottom of the grade
 - The employee be issued with a written Capability warning, which will remain on record for 12 months.

Any such warning would relate to the Capability Procedure al one and would not be referred to as part of any other procedure e.g. Discipline.

- 6.6 The employee will be notified of the decision in writing, signed by the Hearing Officer and will be either hand delivered to the employee or sent by first class mail to their home address. The letter will also notify the employee of any rights of appeal. Any such appeal will be heard by Head Teacher/*insert name of appeal committee* or a nominated representative as set out in **Appendix B – Support Staff**.
- 6.7 If the outcome of the Formal Stage One Hearing is that sufficient improvement has been made by the employee and that the standards required have been met this will be confirmed in writing. The employee will be informed that their performance must be sustained and will continue to be monitored for a period of six months from the date of the Hearing. If levels of performance deteriorate during this period then a further Formal Stage One Hearing will be convened.
- 6.8 If the decision is to offer redeployment to an alternative post, this will be confirmed in writing together with the details of the post. The salary and conditions will be those of the alternative post. A trial period of 4 weeks will be offered. This period

can be extended by mutual agreement up to a maximum of 8 weeks. If the post proves not to be suitable during this time, the employee will return to their original post and the employee's line manager/Head teacher will explore further redeployment opportunities. If there are no suitable opportunities then the line manager/Head teacher will move to the Formal Stage Two Hearing.

- 6.9 If the decision is to issue an employee with a Capability Warning and during the period of the written warning it becomes obvious that no progress is being made and the school/colleagues are suffering detriment, following consultation with a member of the schools HR Provider the line manager/Head teacher may conclude that it is appropriate to move immediately to the Formal Stage Two of this policy.
- 6.10 If a substantial period of absence occurs during the period of the written warning then the 12-month period will be extended for a period of time equivalent to the absence period

7. FORMAL STAGE 2 – PERFORMANCE

- 7.1 Where it has been concluded that the required improvement has not been achieved at the end of or, in some exceptional cases, during, the 12 month period of the written Capability Warning issued at Formal Stage One, a Formal Stage Two Hearing will be convened.
- 7.2 The Line Manager/Head teacher will notify the employee of the hearing.
- The letter will refer specifically to this Procedure and give (in addition to date, time and place) details of who will be present; full but concise details of the lack of capability or competence; the right to be accompanied by a trade union representative or fellow employee of their choice; and the right to ask individuals (to be notified to the line manager/Head teacher three working days in advance) to give supporting evidence.
 - The notification will be sent out at least ten working days in advance of the hearing. An additional copy of the paperwork will be included for the individual to pass to their representative. The notification will be hand delivered to the employee or sent by first class mail to their home address.
- 7.3 The purpose of the Hearing will be to hear the evidence regarding the performance of the employee, review the reasonableness of managerial support and come to a decision on the future employment position of the employee.
- 7.4 The Staff Dismissal Committee will conduct the hearing in accordance with **Appendix A**. The Staff Dismissal Committee will receive from the Line Manager/Head teacher at the Formal Stage One Hearing details of the lack of capability and other relevant background. The employee, or their representative,

will explain their position and be entitled to question any statements and comment generally.

7.5 Immediately after the hearing the Staff Dismissal Committee will consider the range of options available. The options are limited to:

- Redeployment to alternative work, (by mutual agreement subject to there being a suitable vacancy), as an alternative to dismissal
- Dismissal with notice or pay in lieu of notice

7.6 The employee will be notified of the decision, which will be confirmed in writing, signed by the Chair of the Staff Dismissal Committee and will be either hand delivered to the employee or sent by first class mail to their home address. The letter will also notify the employee of any rights of appeal.

7.7 If the decision is to offer redeployment to an alternative post, this will be confirmed in writing together with the details of the post. The salary and conditions will be those of the alternative post. There will be no pay protection or any other benefit. Where appropriate a trial period of 4 weeks will be offered. This period can be extended by mutual agreement up to a maximum of 8 weeks. If the post proves not to be suitable during this time, the employee will return to their original post and the employee's manager will explore further redeployment opportunities. If there are no suitable opportunities then the line manager/Head Teacher will convene a Formal Stage Two Hearing.

7.8 If the decision is to dismiss, the employee will be given 10 working days to lodge an appeal. The appeal will be heard by members of the Staff Dismissal Appeals Committee in accordance with the procedure set out in the Appeals Procedure – **Appendix B.**

8. Non Attendance/Sickness Absence

8.1 The Normal Supervisory Process (Informal Stage) at paragraph 5 of this Procedure will apply.

In situations where an employee's attendance/sickness record is giving some cause for concern, then the employee's line manager/head teacher will discuss those concerns with the employee, providing support and counselling where appropriate. It is essential that any message conveyed in this matter is clear and unambiguous.

If appropriate, the line manager/head teacher will explore with the employee whether there are any underlying medical reasons for the absences/prognosis regarding return to work/future attendance.

- 8.2 As part of the sickness absence meeting the circumstances around the sickness absence should be taken into consideration. If no extenuating circumstances are revealed then the employee should be advised that attendance will be monitored and their line manager/head teacher should also make the employee aware of the consequences of further sickness absence i.e. move into the formal stages of this Procedure. The line manager/head teacher will share the notes of the meeting with the employee.
- 8.3 If an employee has a disability as defined under the Equality Act 2010 advice should be sought from the school's Employee Welfare Adviser, the local Disability Employment Adviser at Job Centre Plus or the Occupational Health Physician. Contact details for the Disability Employment Adviser are available from the school's Employee Welfare Adviser.

9.0 FORMAL PROCEDURE – STAGE ONE – Persistent short term Absence

- 9.1 If, following the normal management supervisory process (informal stage), there is no obvious improvement in the attendance of the employee or if there are signs of patterns emerging in an employee's absence then the line manager/ head teacher will formally meet with the employee to advise that the level of absence is unacceptable.
- The employee may be accompanied at the meeting by their trade union representative or a work colleague of their choice.
 - The employee, or their representative, will have the opportunity to offer an explanation regarding the reason/s for failing to reach the required standard of attendance
 - The option available is to advise the employee that they will be required to submit a Medical Certificate for each absence, regardless of length, for a period of twelve months. The decision will be confirmed in writing to the employee, together with details of the Appeal rights – **Appendix B**.
- 9.2 The employee's attendance will continue to be monitored/reviewed at regular intervals and recorded during the twelve month period and is expected to improve significantly. The employee will receive confirmation of any meetings in writing and will be also be provided with notes of all meetings
- 9.3 If after a six month review the attendance improves and it is decided that no further action is required then the requirement to produce a day one sick note will be removed and this decision will be confirmed in writing to the employee.

- 9.4 If the attendance does not improve during the twelve month period then the line manager/ head teacher will move to the Formal Stage Two of the Procedure.
- 9.5 The individual must be advised, by the line manager/ head teacher, of the likely consequences should their attendance not improve and is not sustained for the duration of the warning.

10. FORMAL PROCEDURE – STAGE TWO – Persistent Short Term

Absence

- 10.1 Where an employee fails to improve their attendance during the twelve month period referred to in **Section 9.4**, then a Formal Stage Two Hearing will be convened.
- 10.2 The Staff Dismissal Committee/Headteacher hereafter referred to as the Hearing Officer;
- Notify the employee, in writing, of the formal hearing. The letter will refer specifically to this procedure and give (in addition to date, time and place) details of who will be present; full but concise details of the lack of capability; the right to be accompanied by a trade union representative or work colleague of their choice, and the right to ask individuals (to be notified to the senior manager three working days in advance) to give supporting evidence.
 - The notification will be sent out at least ten working days in advance of the hearing. An additional copy of the notification will be included for the individual to pass to their representative.
 - The notification will be hand delivered to the employee or sent by first class mail to their home address
- 10.3 The purpose of the hearing will be to consider the following:
- The issues that have been identified as causing concern
 - What action has been taken to improve attendance
 - The reasonableness of management support
 - Does the individual require further support e.g. from occupational Health/G.P./other agencies
 - What are the consequences of failing to achieve? (i.e. the impact on the service)
 - What the expected level of improvement will be
- 10.4 Immediately after the final summaries the Hearing Officer will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).

- Further time should be allowed to enable the employee to reach the required standards
 - The employee is issued with a written warning which will remain on the employee's record for six months. This may be referred to if there is any further absence and may trigger a Stage three Hearing
 - The employee be issued with final written warning which will remain on the employees record for 12 months
 - Dismissal with notice or pay in lieu of notice

10.5 The employee will be notified of the decision in writing, signed by the Hearing Officer and will be either hand delivered to the employee or sent by first class mail to the employees home address. The letter will also notify the employee of any rights of appeal.

11 FORMAL PROCEDURE – STAGE THREE – Persistent Short Term

Absence

11.1 If a warning is given at 10.4, Stage Two of this Procedure and despite encouragement and assistance a member of staff is unable to reach the required standard, a formal Stage Three Hearing will be called. The designated Hearing Officer will;

- Notify the individual of the formal hearing. The letter will refer specifically to this Procedure and give (in addition to date, time and place) details of who will be present; full but concise details of the lack of capability; the right to be accompanied by a trade union representative or work colleague of their choice and if the case is proven may ultimately lead to dismissal.
- The notification will be sent out at least ten working days in advance of the hearing. An additional copy of the notification will be included for the individual to pass to their representative.
- The notification will be hand delivered to the employee or sent by first class mail to their home address. The Hearing will be conducted in accordance with **Appendix A**.

11.2 The purpose of the hearing will be to consider the following:

- The issues that have been identified as causing concern
- What action has been taken to improve attendance?
- The reasonableness of management support

- Does the individual require further support e.g. from Occupational Health/G.P./other agencies
- What are the consequences of failing to achieve? (i.e. the impact on the service)
- What the expected level of improvement will be need to include

11.3 Immediately after the final summaries the Hearing Officer will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).

- Further time should be allowed to enable the employee to reach the required standards
- The employee be issued with a final written warning which will remain on the employees record for 12 months. Any further occasions of sickness absence may lead to termination of the Contract of Employment
- Dismissal with notice or pay in lieu of notice

11.4 The employee will be notified of the decision, verbally at the end of the Hearing, and this will be followed up in writing within 5 days of the Hearing. The letter will be signed by the Hearing Officer and will be either hand delivered to the employee or sent by first class mail to their home address. A copy of the decision letter will be sent to the employee's representative. The letter will also notify the employee of any rights of appeal – Appendix B.

12 Long Term Sickness

12.1 During the period of long term absence line managers/ head teachers should maintain regular contact with employees on an informal basis in addition to the formal process set out below. The purpose of the contact is to ensure employees are supported and are offered all appropriate support.

12.2 Where the absence has been prolonged and/or there is no indication of a return to work a referral will be made by the line manager/ head teacher to the school's Occupational Health Provider. The school's HR Employee Welfare Adviser will advise on the content of the referral. The employee must be informed, in writing, by the line manager/ head teacher that they are being referred to the Medical Adviser at Occupational Health and that they have a contractual obligation to attend. In addition the line manager/ head teacher will also advise the employee that should they fail to attend the appointment then they may be liable to incur the subsequent cost.

12.3 On receipt of the report from Occupational Health a meeting must be arranged between the line manager/ head teacher and employee. The purpose of the meeting will be to;

- Discuss the reason for absence and the occupational health report
- Establish a likely return to work date, if possible

- Identify any work related issues that may be associated with the sickness absence and how these concerns can be addressed
- Discuss what support (if any) can be offered to assist an early return to work e.g. phased return, restricted duties.
- At the meeting other options may be discussed, e.g. redeployment, Ill health retirement. These should only be discussed if advised by Occupational Health/G.P. that the employee is unable to return to their substantive post.
- Explain to the employee what will happen should their absence continue.
- The employee can be supported at the meeting either by a trade union representative or work colleague

12.4 In cases where the employee has been absent for a long period of time and/or there is no prospect of a return to work in the foreseeable future a formal Stage Three Hearing will be convened. Details are set out in section 11.1 and 11.2 of this policy.

12.5 Immediately after the final summaries the Hearing Officer will consider the range of options available. These include: (This list is neither exclusive nor exhaustive).

- Further time should be allowed to enable the employee to reach the required standards
- Dismissal with notice or pay in lieu of notice

12.6 The employee will be notified of the decision verbally at the end of the Hearing and this will be confirmed in writing, signed by the Hearing Officer and will be either hand delivered to the employee or sent by first class mail. The letter will also notify the employee of any rights of appeal – **Appendix B.**

CONDUCT OF THE CAPABILITY HEARING

The procedure to be adopted at the formal capability hearing will be: stage one and stage two and stage three

1. The Hearing will be conducted by the Hearing Officer. They may be accompanied by the school's Employee Relations Adviser who was not involved in the earlier stages of the Procedure.
2. The Hearing Officer will satisfy themselves that the employee understands the purpose of the hearing, the nature of the capability issue(s) and the possible implications arising from it.
3. The case against the employee will normally be presented by the responsible line manager/Head teacher who had managed the concern(s) the matter or such other manager with sufficient knowledge. This manager will not be senior to the manager conducting the hearing. The presenting line manager/ head teacher will describe the case and the presentation may include witnesses, written statements or other documents where these are necessary. (If written statements or other documents are to be presented copies of these should normally be sent to the employee and their representative with the letter convening the hearing).
4. The employee and/or representative will be given the opportunity to question the presenting line manager/ head teacher as well as any witnesses who have given evidence.
5. The employee or their representative will then be invited to respond to the case presented. The employee may also produce witnesses (written statements should be submitted in advance of the hearing), written statements or other documents in support of their case. (Where written statements or other documents are to be presented copies should be provided to the Hearing Officer and presenting line manager/head teacher at least three working days before the hearing). Where witnesses are School employees they will be given reasonable time off with pay to attend the hearing.
6. The presenting line manager/ head teacher will be given the opportunity to question the employee, their representative and any witnesses called.
7. At any stage during the hearing the Hearing Officer and the Employee Relations Adviser may ask questions of the employee, the presenting line manager/ head teacher or any other such person as they may consider appropriate in order to ascertain the facts and arguments.

8. The presenting line manager/ head teacher will then be invited to make a closing statement not introducing any new material.
9. The employee or their representative will be given the opportunity to make a closing statement also without introducing any new material.
10. Both parties will withdraw to allow the Hearing Officer to review and consider the evidence in conjunction with the Employee Relations Adviser. If recall of the parties is necessary to clear points of uncertainty, both parties are to return, notwithstanding that only one is concerned with the point giving rise to doubt.
11. The Hearing Officer will then recall both parties to inform them of the decision. The decision should normally be announced verbally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made within five working days of the hearing concluding. The decision should be confirmed in writing and delivered to the employee either by hand or first class post with a copy to the employee's representative.

CAPABILITY APPEALS PROCEDURE

1. Principles - Right to Appeal

- 1.1 Employees have the right to appeal against decisions made during the formal stages of the capability process. It is in everyone's interests that the process is applied fairly and equitably.

2.0 Timescales

- 2.1 Any appeal must be lodged, in writing, within ten working days of receipt of written notification of the decision taken. For the sake of dealing with the matter expeditiously the appeal will normally be convened within 21 working days of the appeal being lodged with the School.
- 2.2 All parties to appeal hearings must endeavour to make themselves available, often at short notice.
- 2.3 The employee shall be given in writing a minimum of seven days' notice of the date, time and place of the hearing and shall be allowed to be represented by a trade union representative or fellow employee of their choice.
- 2.4 Appeal against Written Warnings and Final Written Warnings and dismissal will be to Clerk to the Governing Body.

3.0 Confirmation of Hearing

- 3.1 Included with the letter notifying the employee of the appeal hearing will be the following:
- a copy of the capability letter sent to the employee confirming the action taken
 - a copy of the employee's letter lodging the appeal
 - the procedure for the hearing
 - any written statement or other documents, which are to be presented by both sides at the hearing. All paperwork should be submitted 5 working days before the date of the Hearing.

Any employee called as a witness will be given reasonable time off with pay to attend the hearing.

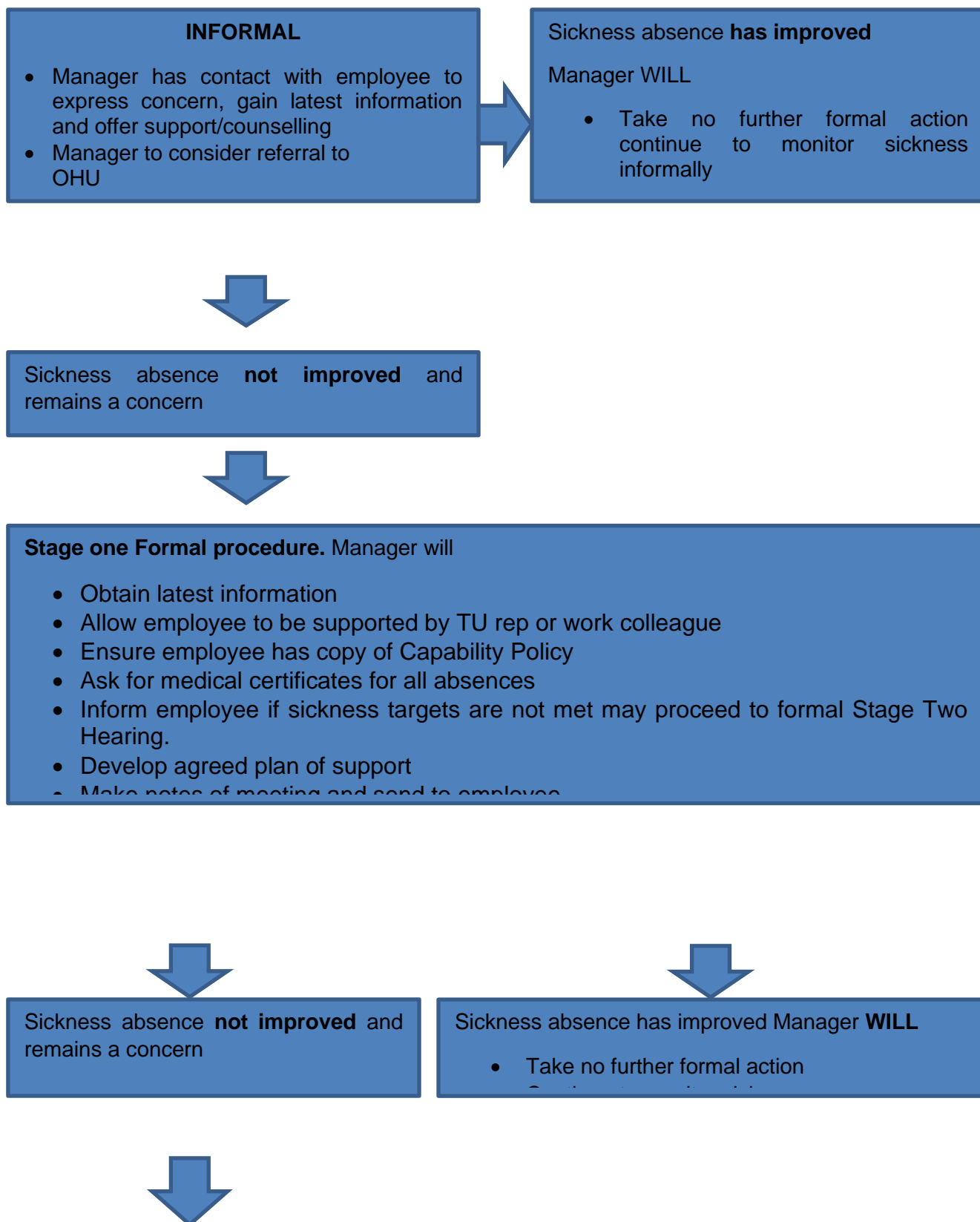
4.0 Procedure for hearing appeals

- 4.1 The Chair of the Staff Dismissal Appeals Committee should satisfy him/herself that both parties are familiar with, and understand, the procedure to be followed at the hearing.
- 4.2 At any stage during the hearing members of the Staff Dismissal Appeals Committee and the Employee Relations Adviser may ask questions of the appellant, their representative, the management representative or any other such person as they may consider appropriate in order to ascertain the facts and arguments.
- 4.3 The management representative shall state the case in the presence of the appellant and their representative and may call witnesses. Witnesses will only be present for the duration of their evidence.
- 4.4 The appellant or their representative shall have the opportunity to ask questions of the management representative and any witnesses.
- 4.5 The management representative shall have the opportunity to examine their witness on any matter referred to in the examination by members of the Staff Dismissal Appeals Committee hearing the appeal, the appellant or their representative.
- 4.6 The appellant or their representative will then put their case and may call witnesses. Witnesses will only be present for the duration of their evidence.
- 4.7 The management representative shall then have the opportunity to ask questions of the appellant and any witnesses.
- 4.8 The appellant or their representative shall have the opportunity to examine their witness on any matter referred to in the examination by members of the Staff Dismissal Appeals Committee hearing the appeal, or the management representative.
- 4.9 The management representative shall then be invited to make a closing statement without introducing any new evidence.
- 4.10 The appellant or their representative shall be invited to make a closing statement without introducing any new evidence.

- 4.11 Both parties shall withdraw to allow members of the Staff Dismissal Appeals Committee hearing the appeal to review and consider the evidence in conjunction with the adviser. If recall of the parties is necessary to clear points of uncertainty, both parties are to return, notwithstanding that only one is concerned with the point-giving rise to doubt.
- 4.12 The members of the Staff Dismissal Appeals Committee hearing the appeal will then recall both parties to inform them of their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made within five working days of the hearing concluding. The decision should be confirmed in writing and delivered to the employee either by hand or first class post with a copy to the appellant's representative.

ABSENCE MANAGEMENT FLOW CHART – PERSISTENT SHORT TERM

SICKNESS



Stage two Formal procedures. Manager will

- Convene a formal hearing
- Write to employee informing of the meeting (giving at least ten working days' notice).
- Employee may be supported by TU or work colleague
- Senior manager considers all information



Outcome/sanction

- Further time to improve
- Written warning
- Final Written warning
- Dismissal
- Senior manager confirms decision in writing.

Stage three Formal Procedure

If warning given at stage two and no improvement manager will

- Convene a hearing
- Write to employee informing of the meeting (giving at least ten working days' notice).

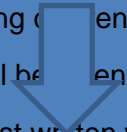
Appeal

Employee must lodge appeal within 10 working days of receipt of written notification

Appeal hearing opened within 21 working days

Employee will be given at least 7 working days' notice of hearing

Appeal against written warnings and final written warnings will be to Clerk to the Governing Body



ABSENCE MANAGEMENT FLOW CHART - LONG TERM SICKNESS ABSENCE

