



Brampton Abbots CE Primary School



Bridstow CE Primary School



The Oak Meadow Federation

## Teacher Capability Policy

This policy will be reviewed and updated by the Governing Body at least every three years. All references to 'the school' imply both Brampton Abbots and Bridstow Primary Schools.

Policy approved by Governing Body on 2<sup>nd</sup> March 2020

Signed Daniel Brearey, Headteacher

Paul Mason, GB Chair

Policy due for review March 2023

# Teacher Capability Policy

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## 1. INTRODUCTION

Governing Bodies are required by law to have a procedure to deal with lack of capability in members of staff and must have regard to the guidance from the Secretary of State.

This procedure is designed in accordance with guidance from the Secretary of State to deal with teacher or headteacher capability in a way that is fair, efficient and in accordance with good employment practice. Good management, clear expectations and appropriate support should significantly help address weakness in performance.

The intention of this procedure is to serve as a means for those with performance issues to be supported back to a good level of performance. Through the early application of this procedure, it should be possible to provide remedial support and guidance.

It is most important that a teacher/headteacher should be advised as soon as possible of a concern regarding their performance. The teacher/headteacher should be given pro-active and positive assistance from colleagues within the school and the Learning and Achievement Service, particularly at the early stages to identify, acknowledge and manage performance issues. It should also be acknowledged that a teacher/headteacher’s performance may suffer as a result of health problems or family/ home-related reasons. Consideration, in these circumstances, should be given to any practical support that the school can offer or the involvement of Occupational Health.

All parties should have due regard to maintain confidentiality during the procedure and, if in doubt, should seek advice on this from the Headteacher or Human Resources. However, this does not override the need for the Headteacher and Governing Body to quality assure the effectiveness of the procedure.

## **2. PROCESS**

Under the Education (School Teachers' Appraisal) (England) Regulations 2012, teachers' performance will be assessed against:

- the relevant standards (national), against their performance targets;
- their job duties as detailed in the School Teachers' Pay and Conditions Document;
- against their role (including job description where available) in the school.

Where the appraisal process and any management meetings which have taken place have been unable to address professional capability or performance of a teacher/ Headteacher which has given cause for concern, this document sets out the procedure to be followed. The aim of the procedure is to provide a structured framework for the improvement in the performance of the teacher or Headteacher.

## **3. DEFINITION OF CAPABILITY**

Employee capability is the talent, aptitude, and ability in order to undertake and perform the job role to the required standard of performance. Lack of capability is defined as a situation in which the teacher or Headteacher fails consistently to perform his or her duties (teaching and/or management) to a professionally acceptable standard. Duties and responsibilities will be those detailed in the relevant Teachers' Standards (national) (available from the Department for Education webpage), performance targets, job duties as detailed in the School Teachers' Pay and Conditions Document and, in the teacher's, or Headteacher's job description where available. Lack of capability is then a failure to improve performance within a reasonable timeframe but not incapability demonstrated over a short period of time which is then remedied.

## **4. SCOPE**

This policy and procedure applies to all categories of schools and Pupil Referral Units. Herefordshire Council is not the legal employer and the school may choose to adopt a different capability procedure but must have regard to the Education (School Teachers' Appraisal) (England) Regulations 2012.

## **5. PROCEDURE**

### **5.1 FORMAL CAPABILITY PROCEDURE**

Where the expected performance of a teacher/headteacher has fallen below the required level and the appraisal process and any management meetings which have taken place have been unable to address the professional capability or performance of a teacher/headteacher the following formal process should be commenced.

At least five working days' notice will be given of the formal capability meeting including details of the time and place of the meeting. The notification will also contain sufficient information about the concerns about performance to enable the teacher or Headteacher to prepare to answer the case at a formal capability meeting. Any written evidence must also be provided to the individual including (not an exhaustive list):

- lesson observations
- substantiated concerns/complaints received
- drop-in observations with written feedback
- performance reviews
- student progress data
- and any data produced by the school's monitoring and evaluation system(s)

The employee has the right to be accompanied to the capability meeting by a trade union representative or work colleague. If the employee and/or their trade union representative or work colleague cannot attend the date proposed, they can suggest one other date within five working days of the original. The five day limit may be extended by mutual agreement.

#### **5.1.1. Formal Capability Meeting**

This meeting is intended to establish the facts. It will be conducted by the Headteacher for teachers or by the Chair of Governors for headteacher capability meetings. The meeting allows the teacher or headteacher to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The Headteacher or chair of Governors 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 and any appropriate management meetings. In such cases, the capability procedure will come to an end and the individual should be advised formally in writing. The Headteacher or Chair of Governors (or equivalent) may also adjourn the meeting to seek further information and/or evidence before reaching a decision.

Where there are sufficient grounds to pursue the capability issue, the Headteacher or Chair of Governors will issue a Capability formal warning or in very serious cases a Capability final warning, that failure to improve within the set period could lead to dismissal;

- Identify the professional shortcomings, eg the standards expected of the teacher which are not being met
- Give clear guidance on the improved standard of performance needed to ensure that the teacher or Headteacher can be removed from formal capability procedures, eg 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 or headteacher improve their performance and mutually agree an action plan
- Set out the timescale for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be between four to ten working weeks. 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 taking into account normal working patterns.

When a warning is issued, the teacher or headteacher will be informed of the outcome in writing within five working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure. The formal warning will remain live for a period of 12 months and a final written warning for 24 months.

#### **5.1.2. Appeal Process - Capability Warning**

If an individual wishes to appeal against the warning, the individual should write to the Clerk to Governors, within five working days of receipt of the written notification, to request a hearing before a Governing Body Panel using Form C9(SCH) – Appeal Against Notification of Capability Warning, explaining their grounds for appeal. A copy of this form should also be sent to the Headteacher where it relates to a teacher or to the Chair of Governors (or equivalent) where it relates to a headteacher. The process will continue whilst any appeal is being arranged.

The Clerk to Governors will arrange the hearing for a date that is reasonably practicable, but no more than ten working days following receipt.

The employee and the Headteacher or Chair of Governors must provide copies of any documentation they wish to refer to, to the Clerk of Governors for the appeal panel, at least two working days prior to the hearing. The employee has the right to be accompanied by a work colleague or their trade union representative.

See Appendix 2 - Format of the hearing.

The Governing Body Panel will consider all the circumstances related to the Capability Warning before making a decision. The possible outcomes at this stage are:

- a) Overturn formal or final written warning and refer back to appraisal system
- b) Uphold formal warning
- c) Uphold final written warning (for very serious cases)

A written copy of the decision of the hearing will be sent to the employee concerned within five working days of the meeting with a copy to the Headteacher or Chair of Governors and the employee's trade union representative.

There is no further right of appeal.

#### **5.1.3. Monitoring and Review Period**

Where a warning has been issued a performance monitoring and review period will follow the formal capability meeting. The length of the monitoring and review period will be agreed at the meeting and will last for between 4 and 10 weeks. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the monitoring and review period the teacher or Headteacher 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.

Individuals will be offered a range of advice and guidance to help restore the level of performance and will be regularly advised as to how he/she is progressing.

The programme of support in this and subsequent stages must be carried out discreetly and the teacher or headteacher must be given a clear and objective view of which targets have not yet been met.

Individuals must be given constructive advice and feedback in writing on all remedial activities undertaken and have opportunities to suggest measures that he/she would deem helpful. The frequency of the feedback should also be agreed at the Formal Review Meeting.

#### **5.1.4. Formal Review Meeting**

At least five working days' notice will be given of the formal review meeting including details of the time and place of the meeting. The notification will also contain sufficient information about the concerns about performance to enable the teacher or headteacher to prepare to answer the case at a formal capability meeting. Any written evidence must also be provided to the individual including (not an exhaustive list):

- lesson observations
- substantiated concerns/complaints received
- drop-in observations with written feedback
- performance reviews
- student progress data
- and any data produced by the school's monitoring and evaluation system(s)

The employee has the right to be accompanied to the capability meeting by a trade union representative or work colleague. If the employee and/or their trade union representative or work

colleague cannot attend the date proposed, they can suggest one other date within five working days of the original. The five-day limit may be extended by mutual agreement.

The meeting will have the same purpose and format as the formal capability meeting.

If the Headteacher or Chair of Governors is satisfied that the teacher or headteacher has made sufficient improvement, the capability procedure will cease, and the appraisal process will restart. The Headteacher or Chair of Governors will write to the teacher/headteacher to confirm the outcome of the process.

Where individuals are referred back to the appraisal system, if their performance gives cause for concern within a twelve month period, then the capability process will commence at the start of the stage they were at when they were referred back to the appraisal system.

Formal appraisal reviews will take place where an individual is referred back to the appraisal system if the appraisal reviews have not taken place.

In cases where the teacher or headteacher has made some improvement during the monitoring and review period and there is confidence that the teacher or headteacher will continue to make improvements, the monitoring and review period can be extended. It is for the School to determine the period of the extension, but this will be no more than a total of fourteen working weeks including the initial monitoring and review period.

In cases where the teacher or headteacher has made insufficient improvement during the monitoring and review period, the teacher or headteacher will receive a final written warning and where no improvement has been made, a recommendation to dismiss

The final written warning will mirror any previous warnings that have been issued. Where a final written warning is issued, the member of staff will be informed of the outcome in writing within five working days that failure to achieve an acceptable standard of performance within a set timescale determined by the School may result in dismissal. They will also be given information about expectations during the further monitoring and review period, the procedure and time limits. This information will be clearly identified with the individual and set out in writing.

#### **5.1.5. Appeal Process – Capability Warning**

If an individual wishes to appeal against the decision taken at the Formal Review Meeting, the individual should write to the Clerk to Governors, within five working days of receipt of the written warning, to request a hearing before a Governing Body Panel using Form C9(SCH) – Capability Appeal Form explaining their grounds for appeal. A copy of this form should also be sent to the Headteacher where it relates to a teacher or to the Chair of Governors where it relates to a Headteacher.

The Clerk to Governors will arrange the hearing for a date that is reasonably practicable, but no more than ten working days following receipt of Form C9(SCH) – Capability Appeal Form.

The employee and the headteacher or Chair of Governors must provide copies of any documentation they wish to refer to, to the Clerk of Governors for the appeal panel, at least two working days prior to the hearing. The employee has the right to be accompanied by a work colleague or their trade union representative.

See Appendix 2 – Format of Hearing

The Governing Body Panel will consider all the circumstances before making a decision. The possible outcomes at this stage are:

- a) Overturn final written warning and refer back to appraisal system
- b) Uphold final written warning
- c) Uphold recommendation for dismissal and refer to Final Decision Meeting

A written copy of the decision of the hearing will be sent to the employee concerned within five working days of the meeting with a copy to the Headteacher or Chair of Governors and the employee's professional representative.

There is no further right of appeal.

#### **5.1.6. Final Decision Meeting**

Where an individual has been issued with a final written warning at the Formal Review Meeting, if their performance does not sufficiently improve during the determined timescale, the Headteacher or Chair of Governors will convene a Final Decision Meeting.

At least five working days' notice will be given of the Final Decision meeting and the notification will give details of the time and place of the meeting.

The employee has the right to be accompanied to the Final Decision meeting by a trade union representative or work colleague. If the employee and/or their trade union representative or work colleague cannot attend the date proposed, they can suggest one other date within five working days of the original. The five-day limit may be extended by mutual agreement. The Headteacher or Chair of Governors can be supported by a HR representative or their trade union representative.

Where acceptable standards of performance have been achieved the capability procedure will end and the appraisal process will restart.

If the performance remains unsatisfactory, the Headteacher or Chair of Governors will make a recommendation to the Governing Body that the teacher or Headteacher should be dismissed. Where the Local Authority is the legal employer, the school will also discuss the matter with the Director of Children's Wellbeing or their nominated representative.

See Appendix 2 – Format of Hearing

#### **5.1.7. Decision to dismiss**

The power to decide that members of staff should no longer work at this school rests with the Governing Body. However, where the Local Authority is the legal employer the decision to dismiss must be ratified by the Director of Children's Wellbeing or their nominated representative.

Once the Governing Body has decided that the teacher or headteacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where the teacher or headteacher works solely at this school, the Local Authority will dismiss the teacher or Headteacher within fourteen days of the date of notification. Where the teacher or Headteacher works in more than one school, the Local Authority will require them to cease to work at this school where the Local Authority is the legal employer. However, the Headteacher or Chair of Governors (of the other school(s)) can make a case to the Director of Children's Services or their nominated representative for the member of staff to remain in their school where it can be evidenced that they are performing satisfactorily.

Once the decision to dismiss has been taken, the Governing Body or Local Authority will dismiss the teacher or headteacher with notice. In these circumstances the employee will not be required to work their notice. A referral must then be made to the Independent Safeguarding Authority.

### **5.1.8. Appeal Against Dismissal**

If an individual wishes to appeal against the dismissal, the individual should write to the Clerk to Governors, within five working days of receipt of the written notification of dismissal to request a hearing before a Governing Body Panel using Form C9(SCH) – Capability Appeal Form explaining their grounds for appeal.

See Appendix 2

The Clerk to Governors will arrange the hearing for a date that is reasonably practicable, but no more than ten working days following receipt of Form C9(SCH) – Capability Appeal Form.

The appeal will be dealt with impartially and by Governors (excluding staff Governors) who have not previously been involved in the case.

The employee and the headteacher or Chair of Governors must provide copies of any documentation they wish to refer to, to the Clerk of Governors for the appeal panel, at least two working days prior to the hearing. The employee has the right to be accompanied by a work colleague or their trade union representative. The Headteacher or Panel of Governors can be supported by a HR representative or a trade union representative.

See appendix 2 for the format of the hearing.

The Governing Body Panel will consider all the circumstances before making a decision.

A written copy of the decision of the appeal will be sent to the employee concerned within five working days of the meeting with a copy to the Headteacher or Chair of Governors (or equivalent) and the employee's professional representative.

There is no further right of appeal.

## **6. NOTES**

If you need further assistance with this document, please refer to your Headteacher or HR Services.

Action initiated under one procedure may be changed to an alternative procedure if investigation of the circumstances indicates this would be more appropriate.

The timescales to complete the stages listed above will be adhered to wherever possible but are not binding on the school.

In applying this procedure, the school will pay due regard to providing reasonable adjustments under employment legislation to an employee who has a disability.

Specialist advice and support may be given to the Headteacher or Governing Body at a formal review meeting and/or appeal hearing by a representative from HR Services.

Detailed notes will be taken of formal meetings and a signed copy sent to the member of staff, trade union representative and Human Resources Service. The member of staff will be able to make comments about the notes in the section provided which should be signed by the individual and sent to the Headteacher or chair of Governors, trade union representative and Human Resources Services.

The records of any meetings concerned with the capability are likely to be classified as sensitive data. The records must be relevant, accurate, confidential and secure.



If an individual goes off sick as a result of the procedure commencing or takes out a grievance, the process will not be suspended, and the timescales will continue to run. However, if an individual is absent from School which is unrelated to the capability procedure, eg bereavement, accident or diagnosed medical complaint, then the procedure will be suspended for this period of time.

#### **7. UNION REPRESENTATION**

Where a member of staff is notified that there are concerns related to their performance, it is recommended that they contact their union representative to help support them throughout the process.

#### **8. COMPLIANCE**

Failure to follow this procedure may impact on good employee relations and the reputation of the school and Governing Body as a good employer. In addition, it may result in the Governing Body breaching employment legislation, incurring financial penalties and / or damage to its reputation.

Headteachers who fail to manage in accordance with this policy will be investigated and this may lead to formal action under this policy or the Disciplinary Policy and Procedure. Chairs of Governors who fail to manage in accordance with this policy will be investigated and this may lead to formal action.

#### **9. IMPACT ON THE SCHOOL'S KEY PRIORITIES**

The policy provides clear statements about headteacher and employee responsibilities to ensure that capability issues are raised and dealt with in a timely manner. This procedure supports schools in delivering excellent teaching and learning and enables the Governing Body to effectively meet its key school priorities.

#### **10. TRAINING AND AWARENESS REQUIREMENTS**

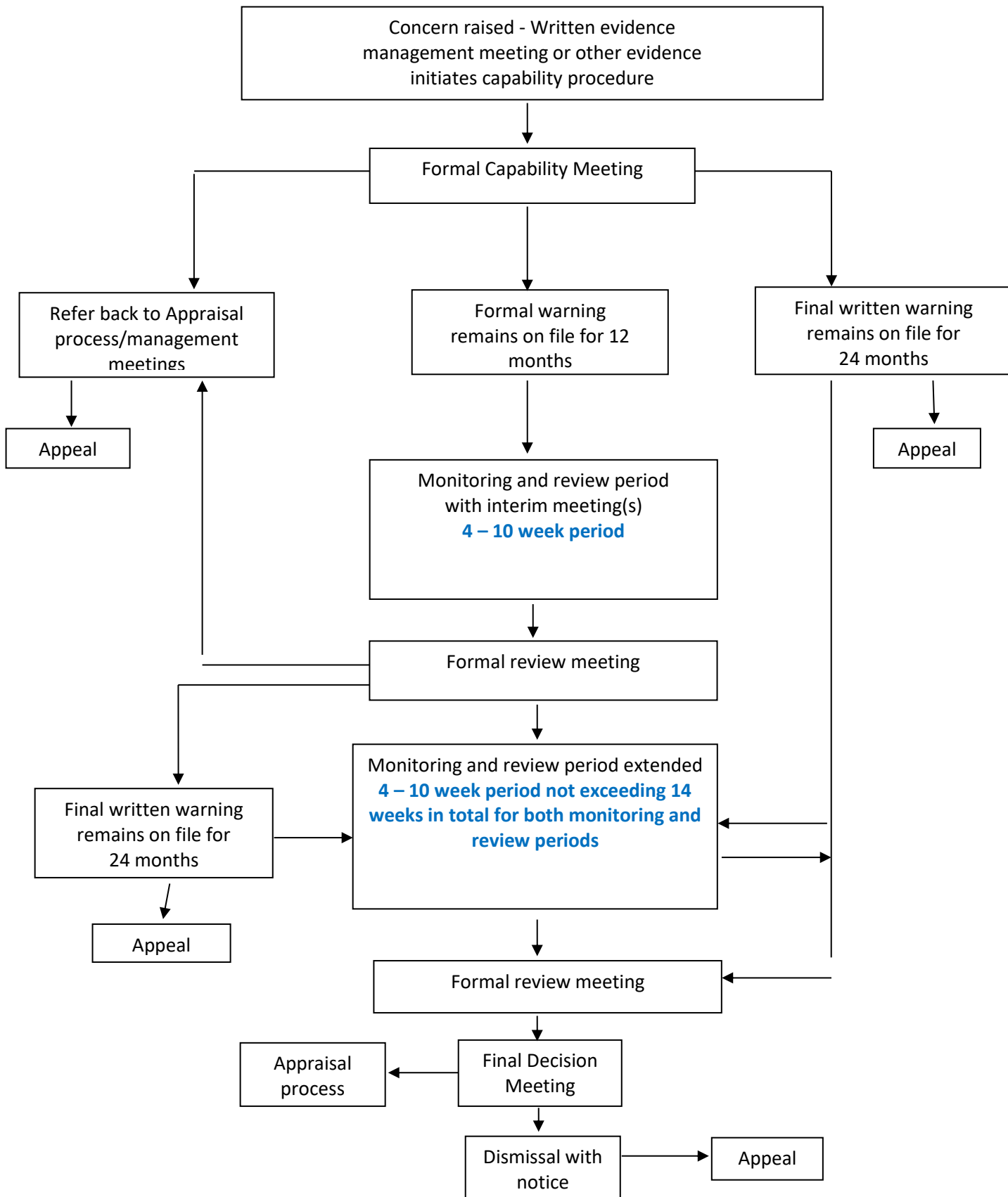
Headteachers and employees will be informed about this policy and procedure via communication channels such as school newsletters, schools online and the extranet.

#### **11. MONITORING**

Herefordshire Human Resources Services is responsible for ensuring the review of this policy and procedure and the Governing Body is responsible for adopting and implementing this policy and procedure.

HR Services and the Learning & Achievement Team will be notified of any cases where it is concluded that the policy was breached. The notification will indicate whether there are any changes or improvements required to the policies, procedure, training, support or any other aspect of the school's approach to grievance matters.

## TEACHER CAPABILITY PROCEDURE – FLOW CHART



## APPENDIX 1      DEFINITIONS AND RESPONSIBILITIES

### DEFINITIONS

The meaning of some key words and phrases, for the purposes of this policy, are explained below:

**Work Colleague.** A current employee from the individual's workplace or by mutual agreement, a current employee from another workplace.

**Headteacher.** The person responsible for leading and managing the school, and has delegated powers to ensure capability issues are appropriately managed. References to the Headteacher shall include any nominated Deputy Headteacher acting on his / her behalf.

**Panel of Governors.** This is a panel of three governors or a panel of the management committee who are used for capability appeal hearings or where the capability issue is against the Headteacher. Where governors or members of the management committee have been involved in previous capability discussions, they are then precluded from being on the appeal panel.

**Trade Union representative.** Lay or permanent official of the Trade Union to which the employee belongs, who has been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at capability hearings.

**Working days.** Any designated term-time or Teacher Education Training Day or any other contractual working day but excluding the day of any capability meeting and the day on which the notification of the meeting is sent to the employee.

### RESPONSIBILITIES

**Headteachers** are responsible for making employees aware of this policy.

**Headteachers and employees** are both responsible for acting respectfully toward others in relation to the implementation of this procedure. All parties should have due regard for maintaining confidentiality and, if in doubt, should seek advice on this from Human Resources Services.

**Human Resources Services** is responsible for providing timely and appropriate advice and support to the Headteacher or Governing Body as required. They are not responsible for making decisions in relation to this procedure; these remain the responsibility of the Headteacher and Governing Body. Human Resources Services is accountable for the advice they give.

**Learning & Achievement Team** is responsible for providing support and guidance to headteachers and governing bodies on identifying, monitoring and resolving teacher capability issues.

## APPENDIX 2 – FORMAT OF HEARING

An employee can appeal against a sanction (warning or dismissal) on the following grounds:

- The procedure was not followed, and/or
- The finding of the hearing was unreasonable, and/or
- The management decision was inappropriate, and/or
- New or additional information has come to light which was not available at the time of the hearing.

The appeal hearing will normally be conducted as follows with the Chair of the Hearing having the discretion to adapt the process to meet the circumstances of the case and dependent upon whether or not the appeal is a full rehearing:

- The Chair of the Hearing will introduce the participants and their roles, check that everyone has the correct documentation and explain what is going to happen.
- The employee (and/or their representative) will present their case/summary submission to the Chair/Panel. The Headteacher/chair of Governors, the Panel (including the HR representative) will have the opportunity to ask any questions. The employee, rather than the representative, must answer questions relating to matters of fact.
- The Headteacher/Chair of Governors will put their case/summary submission to the Panel. The employee (and/or their representative) and the Panel (including the HR representative) will have the opportunity to ask any questions.
- Both sides will sum up their cases (no new information can be introduced at this stage).
- Both sides will adjourn whilst the Panel (and their Advisor) consider the information and make their decision (normally this would be expected on the same day).
- The Panel will ask both sides to return and inform the employee of their decision.
- Outcome to be confirmed in writing.