



## **CAPABILITY PROCEDURE**

### **INTRODUCTION**

This Procedure will apply to all teaching, non-teaching and support staff within the School, including the Headmistress. The Bursar will act in the place of the Headmistress in cases where the conduct or performance relates specifically to non-teaching staff managed by the Bursary Department.

The Procedure applies to all employees of Walthamstow Hall, Full-Time and Part-Time (including supply).

This Procedure should be read in conjunction with the Performance Management Policy. The primary aim is to improve an employee's performance and to maintain good order in the workplace.

To be effective and fair, capability matters should be dealt with promptly.

The Procedure includes a number of time related targets for dealing with different stages of the process. These are included for guidance only and will not automatically invalidate the Procedure if not met. It will be accepted that in exceptional circumstances the guidelines may need to be exceeded (in which case the employee will be advised accordingly).

An employee has a right to have a representative (see Definitions below) of his/her choice present **at each stage of this procedure**.

Where there are concerns about an employee's conduct, the Disciplinary Procedure should be used. It is important to recognise that matters such as, for example, timekeeping are performance issues but should be dealt with in the context of the disciplinary procedure.

### **INFORMAL DISCUSSIONS**

- As part of their acknowledged management responsibilities, the Headmistress may from time to time discuss aspects of conduct or performance with a member of staff on a one-to-one basis. Such discussions will take place informally and should not be constrained by, or come within, the scope of these procedures, nor shall counselling and advice given in this informal way count as warnings within the scope of these procedures. The status of the discussion should be made known to that member of staff. The fact that attempts have been made previously to resolve informally aspects of an employee's performance may, however, be a valid reason for deciding that performance issues should be dealt with under the formal procedures.

- Any cause for concern about the performance of an employee should have already been the subject of informal discussions, and the Headmistress will have already drawn to the attention of the employee, the ways in which performance is deficient and provided the employee with an opportunity to make representations.
- If the Headmistress feels that it is necessary to record informal discussions with an employee about aspects of performance, such a written record should be in the form of an “aide memoire” and a copy of it should be given to the employee concerned, in the same way as notes can be made of discussions about other aspects of an employee’s work such as development of teaching programmes.
- Should information emerge during the course of informal discussions that the employee’s performance continues to be deficient, the matter should be dealt with under the formal capability procedures. The employee should be advised immediately, and the meeting closed. The Headmistress should proceed to Stage I of this Procedure and inform the employee of this in writing.

## **STAGE I – FORMAL ASSESSMENT OF PERFORMANCE**

- The formal assessment procedure should aim to explore and address all the matters that have been giving cause for concern. The purpose of Stage I is to provide the employee with an opportunity to improve and reach a satisfactory standard of teaching/work.
- Where it appears that an employee’s performance has been, or is being affected adversely by ill health, medical advice will be obtained, and if appropriate, the capability proceeding may be suspended.

### **First Assessment Period**

- A meeting should be arranged by the Headmistress. In consultation with the employee, the Headmistress should determine aims and objectives that will focus on weaknesses and provide a framework to improve performance. A timescale for review will be determined by the Headmistress. This should normally be half a school term (5 or 6 weeks).
- At the end of the assessment period, the Headmistress shall review the employee’s performance and determine one of two courses of action:
  - If the employee’s performance has improved sufficiently, she shall inform the employee accordingly.
  - If there is no or insufficient improvement performance the Headmistress shall proceed to the second assessment period.

### **Second Assessment Period**

- The Headmistress shall call a meeting with the employee and (the key points of the meeting must be confirmed in writing after the meeting):

- inform the employee of the ways in which his/her performance remains unsatisfactory.
  - warn the employee that his/her job may be at risk.
  - supervise the work of the employee or arrange for direct supervision by an appropriate colleague who is experienced and competent in the work;
  - determine another review period, normally half a term (5 or 6 weeks) including a meeting at the end of the review period.
- At the end of the second assessment period the Headmistress shall determine one of two courses of action:
    - If, the Headmistress is of the view that the employee's performance has improved sufficiently, she shall inform the employee in writing.
    - If the Headmistress believes there has been insufficient improvement in the employee's performance, she shall be informed that the matter will proceed to Stage 2 of the procedure. The employee should be made aware of the precise areas of poor performance.

## **STAGE 2 – FORMAL HEARING**

- **Formal Hearing – Rights of the Employee** Where it is found that there are grounds for formal charge(s) the employee shall be advised of the following in writing, giving notice of not less than five working days' and not normally more than twenty-five working days:

The nature of the alleged poor performance, together with copies of any reports submitted or to be submitted to the Governors and any statements made by witnesses.

The proposed date, time and venue of the capability hearing.

The right of the employee to request a postponement of the hearing should there be exceptional circumstances.

The employee's right to be represented at the capability hearing.

The right of the employee or his/her representative to make written submissions prior to the disciplinary hearing and/or to make statements at the hearing. He/she shall also be advised of his right to call witnesses and also to question any witnesses called by a person presenting the case against him/her.

The employee should be advised that he/she may be dismissed if the allegation(s) are substantiated. At this stage, the capability panel should not be made aware of any "live warnings" as this may prejudice their consideration of the case.

- **Hearing before the Capability Panel of the Governing Body.** The hearing will be before the Capability Panel (see definitions below)
- **Presentation of Case by the Headmistress.** The Headmistress, or such person as she may engage to act on her behalf, presenting the case against the employee shall be required to give details of the allegations against the employee and shall be allowed to call witnesses to give evidence before the Capability Panel. The Headmistress or such person as she may engage may be accompanied by an advisor.
- **Right of Employee or his/her Representative to Question Witnesses.** The employee and or his/her representative shall be given the opportunity to question any witness who gives evidence before the Capability Panel.
- **Presentation of Case by the Employee or his/her Representative.** The employee or his/her representative may then put the employee's case to the Capability Panel, and he/she may also call witnesses in support of his/her case. These witnesses may be questioned by the person presenting the case against the employee.
- **Questioning of Witnesses by the Capability Panel.** Members of the Capability Panel shall be allowed to question witnesses to clarify any point after the two parties have had an opportunity to question them.
- **Withdrawal of Parties from the Hearing while the Case is Considered.** The Headmistress and the employee or the employee's representative may sum up their respective cases (in that order) and should then withdraw, leaving the committee to deliberate in private. The Headmistress should ensure that any advice she wishes to give to the Panel is given as part of her summing up. The panel may recall the Headmistress and the employee with the employee's representative to clear points of uncertainty on the evidence which has been given, provided that both parties are recalled even if the point of uncertainty concerns the evidence of one party only.

## **The Finding**

- The Panel shall determine whether, on the balance of probabilities, the allegation against the employee is proven.
- If the Panel does not uphold the allegation, it shall dismiss the case and inform both parties forthwith (orally, if possible) and in writing.
- Where the allegations against the employee are upheld, both parties shall be called before the Panel and the employee's record of service shall be confirmed by the Clerk of the hearing (see definitions below).

## Consideration of Action

- If the Capability Panel decides to take disciplinary action against the employee it shall, depending on its judgement of the gravity of the offence:
  - Issue an oral warning which shall remain on the employee's file for a period of six months from the date of the Hearing or the Appeal, if any.
  - Issue a written warning which shall remain on the employee's file for a period of twelve months from the date of the Capability Panel finding or the Appeal, if any.
  - Issue a final written warning, which shall state that the consequences of further misconduct of any kind will lead to proceedings resulting in dismissal. The final written warning will remain on the employee's file for a period which shall be determined by the Disciplinary Panel; up to a maximum of two years.
  - Recommend the dismissal of the employee.
- **Further Opportunity to Improve Performance.** Subject to any Appeal to the Governing Body, if the employee is given any warning (as outlined above), he/she shall be given a further opportunity to improve his/her performance and if, after a period of not less than half a term (5 or 6 weeks) sufficient improvement has not taken place, the Headmistress shall again initiate procedures in accordance with Stage 2 of this procedure.
- Any action taken by the Capability Panel shall be confirmed in writing. The letter confirming the disciplinary action shall give details of the shortcomings in performance, a statement of the employee's right of appeal. The decision shall be confirmed in writing as soon as possible and in any case within ten working days of the hearing of the Capability Panel. A copy will be sent to the employee's representative.
- Any warning against the employee shall be removed from the employee's record after the period of satisfactory service determined by the Disciplinary Panel. The employee shall be notified in writing that the warning has been removed.
- If the employee has not been represented by a Trade Union Officer or a Trade Union Official or a colleague and if disciplinary action is taken against the employee, he/she shall be advised in writing to notify his/her Trade Union (if a member) or to seek legal advice if he/she has not already done so.

## STAGE 3 – APPEAL

### Right of Appeal

- The employee shall have the right of appeal against the findings of, and/or the disciplinary action taken by the Capability Panel.

Notice of appeal against the findings and/or the decision of the Capability Panel shall be given in writing by the employee or representative within 10 working days of receipt of the letter confirming the disciplinary action against him/her. This should set out the grounds of the appeal. This Notice of Appeal shall be sent to the Chairman of the Governing Body who shall forthwith acknowledge its receipt in writing.

- **Appeal Panel.** Where the employee gives Notice of Appeal the Chairman of the Governing Body shall arrange for an Appeals Panel as defined in Paragraph A to hear the appeal as soon as possible and normally within twenty working days of receipt of the employee's notice of appeal.
- **Notice of Hearing to Employee.** The Chairman to the Governing Body shall send the employee or his/her representative not less than 10 working days before the hearing of the Appeal, notification of the date, time and place of the hearing.
- **Submission of Written Statements to Appeals Panel.** The employee or his/her representative and the Headmistress may make submissions in writing which should reach the Chairman of the Governing Body at least five working days before the date fixed for the Appeal Hearing, and the Chairman of the Governing Body shall ensure that copies of the submission are sent to all parties concerned before the hearing.
- **Procedure for the Hearing.** The purpose of the hearing is to review the decision of the Capability Panel (see definitions below). It is not a re-hearing of the second stage. It is not usually appropriate to recall witnesses unless the Chairman of the Appeals Panel accepts there is some exceptional justification to do so. The Appeals Panel, in normal circumstances, shall proceed as follows:
  - Chairman of the Capability Panel (or such other person as he/she shall engage to act on his/her behalf) shall present the case against the employee, setting out the reasons for the decision (or his representative).
  - The employee or his/her representative and the Appeals Panel will have the opportunity to question the Chairman of the Capability Panel or Headmistress.
  - The employee or his/her representative will outline the grounds of their appeal.
  - The Chairman of the Capability Panel (or Headmistress) and the Appeals Panel will have the right to question the employee or his/her representative.
  - The Chairman of the Capability Panel (or his/her appointee) may make closing submissions; and
  - The employee or his/her representative shall have the right of final reply.
- **Consideration of Decision by Appeals Panel.** All parties except the panel and Clerk to the Hearing shall then withdraw from the meeting while the panel considers its decision.

- **Decision of Appeals Panel.** Where the Appeals Committee rejects the decision of the Capability Panel it shall replace that decision by such a decision as it thinks fit.
- **Notification of Decision of Appeals Panel to the Employee.** The employee and his/her representative shall be recalled and informed of the decision of the Appeals Committee. The Chairman of the Appeals Panel shall confirm this decision in writing to the employee.

## **BINDING DECISION**

- The decision of the Appeals Panel shall be binding upon the Governing Body.

## **PROCEDURAL GUIDANCE**

### **Informing the employee that the capability procedure is being invoked.**

- Save in the most exceptional circumstances, the Headmistress shall, as soon as practicable, inform the employee in writing of the nature of the allegations and provide a copy of the Capability Procedure. It is equally important for detailed records to be kept of any employee whose performance is considered unsatisfactory. He/she shall be informed from the outset that such records are being kept and that they shall be treated confidentially and carefully safeguarded. An employee shall have the right to inspect his/her records and files excluding any confidential references and other privileged information, except where any information contained in such records or files is to be used as evidence in any disciplinary proceedings against the member of staff.

### **Representation**

- Any employee against whom poor performance is alleged shall be advised of the right to be represented at any hearing or investigation into the allegation. The employee and his/her representative have the right to be present throughout all hearings. If nominated by the employee, the representative can be the point of access for documentation.
- Neither the employee nor his/her representative has a right to be present during any investigative interviews/meetings other than their own.

### **Allegations Against a Trade Union Official**

- Where it is intended to invoke these procedures against a Trade Union official, a Trade Union Officer shall be informed as soon as possible. No action shall normally be taken against the Trade Union Official until the allegations have been discussed with the Trade Union Officer of the relevant union.

## Definitions

The “Appeals Panel” shall mean the Governing Body of the School at which the employee is employed excluding those members who are disqualified by virtue of their having been involved as a witness or as a complainant or as a member of the Disciplinary Panel in the case in question. The absence of one or more Governors will not invalidate the process as long as a minimum of three Governors are present.

A “Capability Panel” shall mean a Committee established by and from among the Governing Body of the School to hear cases in accordance with this procedure.

The “Clerk” shall have the meaning ascribed to the Clerk of the Governing Body by the Articles of Association of the School save that the Governing Body may appoint some other person of its choosing to advise and assist the Governing Body in procedures relating to the capability of employees.

Employee’s “Representative” may include Trades Union. Official/Officer, or colleague acting on behalf of the employee.

Signed: .....

Date: .....

Mrs J Adams  
Chairman of the Governing Body

Reviewed June 2021  
Date of next review June 2022