



Meadow Park

Patience, Guidance and Determination

Capability Procedure for School Based Staff

Date: November 2020

Review Date: Autumn 2021

CAPABILITY PROCEDURE FOR SCHOOL BASED STAFF

| <u>CONTENTS</u> | <u>PAGE No.</u> |
|--|------------------------|
| 1. POLICY STATEMENT | 1 |
| 2. APPLICATION OF PROCEDURE | 1 |
| 3. INTRODUCTION | 2 |
| 4. SUSPENSION OF DELEGATED POWERS | 3 |
| 5. THE PROCEDURE | 4 |
| 5.1 The Informal Stage | 4 |
| 5.2 The Formal Stage One | 5 |
| 5.3 The Formal Stage Two | 6 |
| 6. PROCEEDINGS AT INCAPABILITY HEARING | 8 |
| 7. APPEALS | 10 |
| 8. CONFIDENTIALITY | 10 |

APPENDICES

| | |
|---|----|
| APPENDIX A – ALTERNATIVE EMPLOYMENT & JOB REDESIGN | 11 |
| APPENDIX B – REVIEW PERIODS | 12 |
| APPENDIX C – IRREDEEMABLE INCAPABILITY – ‘FAST TRACKING’ | 13 |

IT IS RECOMMENDED THAT THE ADVICE OF THE SCHOOL'S LINK PERSONNEL OFFICER IS SOUGHT PRIOR TO INVOKING THIS PROCEDURE.

CAPABILITY PROCEDURE FOR SCHOOL BASED STAFF

1. POLICY STATEMENT

- 1.1 The Governing Body of Meadow Park School is committed both to providing education of the highest quality for all its pupils and to exercising its responsibilities for managing employees in a positive and supportive way. These commitments require the Governing Body to ensure that appropriate mechanisms are in place to deal with an employee who fails to reach satisfactory standards in her/his work as a result of lack of ability.
- 1.2 The Governing Body believes that every employee should have a clear knowledge and understanding of the standards of performance which are expected of them in the course of their work. It acknowledges that it would be inappropriate to take any action in relation to an individual's capability if these have never been made clear to her/him. It is the responsibility of the Governing Body and the school management team to ensure the employees are fully aware of their duties and responsibilities.
- 1.3 Training and development opportunities and external support mechanisms will be made available to all staff within the school, in order that they can develop their full potential.
- 1.4 The Governing Body and the school management team will endeavour to provide either directly or indirectly all reasonable support to individuals whose performance is inadequate in order to assist them to improve to a more acceptable standard. This procedure provides a framework to facilitate a support mechanism for dealing with capability issues.

2. APPLICATION OF PROCEDURE

- 2.1 This section is intended to assist Headteachers in determining the appropriateness of the application of each procedure in any given circumstance. This procedure **will not be used** in the following situations :
- 2.1.1 Where an employee fails to reach satisfactory standards as a result of her/his carelessness, negligence or wilful action which results in an allegation of misconduct or where there is concern as to the conduct and behaviour of an employee – this will be addressed through the schools disciplinary procedure.
 - 2.1.2 Where an employee has a concern about her/his treatment – this will be addressed through the schools grievance procedure.
 - 2.1.3 Where there is concern over an employees attendance that is related to sickness absence – this will be addressed through the schools Managing Sickness Absence Procedure, where the Governing Body has adopted a separate procedure for use in such circumstances.
 - 2.1.4 Where in the case of newly qualified teaching staff, evidence of poor performance arises during their period of probation – this will be addressed through the procedure as identified under the Education [Induction Arrangements for School Teachers] [England] Regulations 1999.
 - 2.1.5 Where in the case of support staff, evidence of poor performance arises during an employees probationary period – this will be addressed through the schools Probationary Procedure for support staff, where the Governing Body has adopted a procedure for use in such circumstances.

3. INTRODUCTION

- 3.1 The procedure applies to all staff based within the school – **with the exception of cleaning and catering staff employed by the Council’s Contract Services Department. This does not remove the entitlement from the Headteacher to bring concerns with regard to capability to the attention of the contractor. In such circumstances the relevant capability procedure applicable to cleaning and catering staff will be**

used. Further advice and guidance on the application of that procedure can be obtained from the Personnel Division – Contract Services Department.

- 3.2 In most cases the Headteacher will be responsible for invoking the schools Capability Procedure – which will include developing and overseeing a programme of support and development for the individual concerned and to monitor the individual's performance. However, she/he may nominate an appropriate senior member of staff to invoke the procedures where the circumstances are considered appropriate, therefore, any reference to Headteacher in this procedure may also refer to a nominated senior officer in appropriate circumstances. Depending on the circumstances of the case the Headteacher may seek the advice of the Director of Education and Lifelong Learning or her/his representative(s), ordinarily this will be the school's Link Personnel Officer and/or School Improvement Officer.
- 3.3 In the case of the Headteacher's performance failing to meet acceptable levels, the Chair of Governors should invoke the procedure, or, in her/his absence or at her/his direction, the Vice Chair or other designated governor. The Chair of Governors may request the assistance of the Director of Education and Lifelong Learning or her/his representative or, for those Voluntary Aided Schools who choose to adopt this procedure, the Archdiocesan or Diocesan Authorities. In a case involving the capability of the Headteacher all references in this procedure to 'the Headteacher or appropriate senior member of staff' will be replaced by reference to 'the Chair of the Governing Body or other designated governor.'
- 3.4 The Governing Body shall appoint a Committee, referred to as the First Committee, consisting of not less than three governors, with delegated powers to deal with capability matters that reach stage 6 below and an Appeals Committee to make decisions on subsequent appeals in accordance with stage 7 below. A representative of the Director of Education and Lifelong Learning should advise the First Committee, ordinarily this will be a Personnel Officer. The Appeals Committee must contain the same number of governors as the First Committee and again should be

advised by a representative of the Director of Education and Lifelong Learning, who was not involved in advising the First Committee. No governor who has served on the First Committee can serve on the Appeals Committee. The Headteacher should not be a member of either Committee. The school should make arrangements for notes to be taken of the First Hearing and any subsequent Appeal Hearing. The note-taker should not be any member of the governors panel nor should it be the advisor to the panel. Such notes will be typed up within five working days of the hearing and will be signed by the Chair of the panel as a record of the proceedings. Such notes will be distributed to all parties who attended the hearing as soon as possible thereafter but within five working days of being signed by the Chair. Governors may still make their own notes to assist in the decision making process on the conclusion of the hearing.

- 3.5 For the purposes of this procedure 'mutually convenient date' signifies acceptance by all parties of a particular date, from the choices offered under paragraph 5.3.9. Where, in accordance with 5.3.12 below, the employee does not indicate attendance, then the appropriate Governors Committee may choose to hear the Hearing in the employee's absence.

4. SUSPENSION OF DELEGATED POWERS

- 4.1 In the event that the LEA suspends a Governing Body's delegated budget the staffing powers LEA's set out in Section 54 [Community Schools] and 55 [Voluntary Aided Schools] of the School Standards and Framework Act 1998 would apply.
- 4.2 Section 54 gives the LEA the right to suspend and dismiss staff in Community Schools. Section 55 states that the Governing Body of a Voluntary Aided School cannot suspend or dismiss staff without the agreement of the LEA and the LEA can require the Governing Body to dismiss any teacher at the school.
- 4.3 In such circumstances references to the Headteacher, the Chair of Governors or other nominated governor in this procedure would apply to the Deputy Director of Education and Lifelong Learning or representative. This representative

may be the Headteacher if the Deputy Director feels that this is appropriate. The hearing laid out in Section 6 would be chaired by the Director of Education and Lifelong Learning and the Appeals Committee would be a sub-committee of the Council's Cabinet.

5. THE PROCEDURE

5.1 The Informal Stage

- 5.1.1 School management processes include the monitoring of employee performance, therefore, where an individual's performance fails to meet the standards or objectives set, due to lack of skill, knowledge or ability, the Headteacher should gather as much information regarding the issue and its degree of seriousness.
- 5.1.2 If the Headteacher believes that an employee's performance is inadequate, s/he should arrange a meeting with the employee to discuss the area(s) of concern. The employee should be given five working days notice of the date and time of any such meeting.
- 5.1.3 Although an employee's trade union/professional association will not automatically become involved at this stage, it may be beneficial to all parties that the relevant recognised representative is aware of the situation. The Headteacher should advise the employee to consider informing her/his representative of discussions that take place in the context of the informal stage.
- 5.1.4 At the meeting the Headteacher should discuss her/his concerns in a specific and constructive manner seeking the employee's views at all times. The Headteacher must give consideration to any mitigating circumstances that may be contributing to the employee's poor performance. Clear guidance should be given to the employee as to where they are failing to perform adequately within their role and what is expected of them in the future.
- 5.1.5 The employee should be offered such advice, encouragement and support as appropriate and practicable to enable them to effect an improvement within a

reasonable period [APPENDIX B] – this should normally be at least six working weeks. Any measures taken during this period are to assist the employee in achieving the required improvement, such as training or retraining, planning work, observation of good practice, reorganisation of work, team teaching, visits to other schools etc.

- 5.1.6 The Link School Improvement Officer should be consulted at this stage in order to assist the Headteacher and the employee to achieve the required improvement by following the agreed package of support.
- 5.1.7 The Headteacher should document all discussions and meetings as may be necessary for their personal use which could be used at the later stages of the procedure.
- 5.1.8 The employee will be informed at this stage that if there is no improvement during the review period the formal stage of the procedure may be invoked.
- 5.1.9 If on conclusion of the review period [or during the review period if the employees performance has improved significantly], the manager is satisfied that progress is being made, the process may be modified or terminated in consultation with the employee, without need to proceed to the next stage.

5.2 The Formal Stage – Part One

- 5.2.1 No formal action will be taken under this procedure against any member of staff who is a representative of a recognised trade union or professional association, until the circumstances of the case have been discussed with the local branch secretary or a full time official of that association or union.
- 5.2.2 Employees will have the right to be represented at any meeting called under the formal stage of this procedure. The representative can be anyone chosen by the employee including an official of her/his trade union or professional association. This right does not, however, include the right to be accompanied/represented by a solicitor or other legally qualified representative; a former employee of the

school/Authority who has previously been dismissed for misconduct or gross misconduct nor a member of the School Governing Body or Elected Member of Knowsley MBC.

- 5.2.3 If, following the informal stage, the support programme does not result in a satisfactory improvement in performance, the Headteacher will arrange a meeting with the employee. The employee should be informed in writing, at least five working days in advance - of the date, purpose of the meeting and her/his right to be accompanied/represented subject to paragraph 5.2.2.
- 5.2.4 A representative(s) of the Director of Education and Lifelong Learning may also be invited to attend this meeting, this will usually be the link School Improvement Officer and the link Personnel Officer who will advise on the monitoring programme and the procedure respectively.
- 5.2.5 The Headteacher should make provision for notes to be made of any meetings held under the formal stages of the procedure. Such notes may be taken by the Headteacher. The Headteacher should make it clear to the employee and her/his representative that such notes will only be made available to her/him if and when the case proceeds to a formal hearing. The Headteacher should advise the employee and her/his representative that they may wish to make their own notes of the meeting. The Headteacher does not need to agree the content of her/his notes with the employee concerned. Such notes will be included as part of the prepared statement of case as described in 5.3.11 of the procedure. Such notes will be typed.
- 5.2.6 At this meeting the way and extent to which the employee's performance is considered to be deficient should be described fully, using as specific and objective criteria as possible. The employee will be given the opportunity to respond fully to points raised and to give their own reasons for the deficiency.
- 5.2.7 In light of the employee's responses to these concerns, the Headteacher must decide whether to terminate or modify the process [as in paragraph 5.1.9] or to set a further review period [APPENDIX B] under the formal stage of the procedure.

- 5.2.8 In exceptional circumstances, where it can be clearly demonstrated that the employee will be unable to achieve an acceptable level of performance, or where her/his lack of capability creates an immediate danger to employee, public safety or where pupils education is in jeopardy, the process can be 'Fast Tracked' in accordance with APPENDIX C.
- 5.2.9 The Headteacher should make it clear to the employee that, if s/he is unable to achieve the required standards, consideration will be given to the termination of her/his employment.
- 5.2.10 The Headteacher will send the employee a letter within five working days of this meeting, detailing the areas of perceived deficiency, the expected standards/targets, the timescales for achieving these, the programme setting out what support and monitoring will be available during the review period and warning against failure to improve.
- 5.2.11 If the employee disagrees with the Headteacher's decision s/he may object in writing to the Headteacher within ten working days of receipt of this letter. This objection will form part of the documentation to be considered at any subsequent incapability hearing [section 6].
- 5.2.12 During the review period, the employee's performance will be closely monitored, a programme of advice and support agreed with measures in accordance to paragraph 5.1.5 and meetings with key people [School Improvement Officers, Curriculum Co-ordinators and Consultants, Headteacher etc] held as frequently as appropriate to feedback to the employee.
- 5.2.13 If on conclusion of the review period [or during the review period if the employees performance has improved significantly], the Headteacher is satisfied that progress is being made, the process may be modified or terminated in consultation with the employee, without need to proceed to the next stage.

5.3 The Formal Stage – Part Two

- 5.3.1 If the required improvement in performance has not been achieved, a further review period will be established, and is normally referred to as the Final Review Period.
- 5.3.2 The same process as detailed in paragraphs 5.2.2 to 5.2.6 should be followed. However, the Headteacher should inform the employee that if the required improvement in performance is not achieved during the Final Review Period, her/his employment may be terminated, subject to the consideration of either suitable alternative employment or altering the level of the employees duties and responsibilities on a permanent or temporary basis [APPENDIX A]. This together with the main points discussed during the meeting, should be confirmed in writing within five working days.
- 5.3.3 If the employee disagrees with the Headteacher's decision s/he may object in writing to the Headteacher within ten working days of receipt of this letter. This objection will form part of the documentation to be considered at any incapability hearing [Section 6.0].
- 5.3.4 During the Final Review Period, the employees performance will be monitored as in paragraph 5.2.10.
- 5.3.5 On conclusion of the Final Review Period the Headteacher must examine all the evidence available to her/him and must decide whether a satisfactory level of performance has been achieved. If it has, the Headteacher should inform the individual that s/he is satisfied with the progress that the employee has made and that no further formal action will be taken but that her/his performance will continue to be monitored in the usual way. This decision should be confirmed in writing within five working days.
- 5.3.6 If the Headteacher is not satisfied that an acceptable level of performance has been achieved s/he should call a meeting and is referred to as the Final Review meeting. At this meeting the whole history of the case should be outlined, the current reasons for dissatisfaction clearly stated and the individual and/or her/his trade union/professional association representative allowed to respond. The employee should be afforded adjournments as and when required during this interview to confer with her/his representative before

presenting a response to a particular question. Having listened to these responses the Headteacher must decide whether to terminate or modify the procedure or to consider the termination of the individual's employment.

- 5.3.7 If the Headteacher decides that consideration should be given to the termination of the individual's employment then s/he should inform the Clerk to the Governors to convene the First Committee as detailed in paragraph 3.5 to hear the case at an incapability hearing.
- 5.3.8 If the Headteacher pursues the course of action detailed in 5.3.7 the support that has been provided to the employee should continue until the incapability hearing takes place. This will be a particularly difficult period of time for the employee and it is in the interest of her/him and the pupils [if the employee is a teacher] that this support should continue.
- 5.3.9 The employee should be informed in writing, giving at least ten working days notice, that s/he is required to attend an incapability hearing with a sub-committee of the Governing Body. However, where possible the letter should be sent well in advance of this timescale and should provide the employee with a choice of dates and times for the hearing as detailed in 3.5. The letter to the employee should normally be issued by the Clerk to the Governors, however, if the letter is issued by the Headteacher, it should indicate that the Headteacher will be asking the Clerk to the Governors to convene the hearing. The letter must explain that the hearing will consider whether the individual should be dismissed because of inability to carry out the duties of her/his post to a satisfactory standard due to lack of capability. The letter should inform the employee that s/he has the right to be represented at this hearing as detailed in paragraph 5.2.2.
- 5.3.10 The letter in paragraph 5.3.9 should include details of all documentary evidence that is to be submitted to the hearing, the names of any witnesses to be called by the Headteacher and also a copy of the Schools Capability Procedure. This letter and all relevant papers will be made available to the Governors First Committee. At this time the employee will receive a copy of the notes taken during the Final Review Meeting [Paragraph 5.3.6]. Witness statements

will only be submitted in evidence to any incapability hearing were the witnesses have indicated a willingness to attend a hearing and are prepared to be questioned by all parties on her/his statement. When a witness fails to attend a hearing, the notes of her/his statement will not be entered into evidence and will be disregarded by the panel in their deliberations.

5.3.11 The employee should submit, to the Clerk to the Governing Body, any documentation and details of witnesses s/he intends to call to the hearing at least five working days in advance of the hearing. The employee need not make any statement in her/his defence prior to the hearing. Submitted papers will be made available to the Headteacher and Governors First Committee in advance of the first hearing. Should the employee not respond in accordance with the timescales identified then the hearing will take place on the earliest of the dates offered in the letter under paragraph 5.3.9 above.

5.3.12 No new written evidence may be presented outside of the above timescales unless agreed by both parties.

6. PROCEEDINGS AT INCAPABILITY HEARING

6.1 The hearing will be heard by the Governors First Committee, who will be advised by a representative of the Director of Education and Lifelong Learning.

6.2 The chairperson of the First Committee will ask all individuals present to introduce themselves.

6.3 The Headteacher, who may be accompanied by a representative of the Director of Education and Lifelong Learning, should present the case that the employee is unable to carry out the requirements of her/his post due to lack of capability and may call witnesses as appropriate. Witnesses will only attend the hearing at such time as they are giving their evidence and being questioned by the Headteacher, the Panel or the employee and/or her/his representative.

- 6.4 The employee and/or her/his representative may question the Headteacher on any aspect of her/his case.
- 6.5 The employee and/or her/his representative should offer representations to the Committee. Witnesses may be called as appropriate as per paragraph 6.3. above. The Headteacher will be allowed to question witnesses.
- 6.6 The Headteacher may question the employee or her/his representative on any aspect of her/his case.
- 6.7 The Governors Committee may question either party and witnesses at any time as considered appropriate.
- 6.8 Both parties, starting with the Headteacher, may sum up their case if they wish. No new material may be added at this stage.
- 6.9 Both parties will then withdraw whilst the Governors Committee consider the matter. At any time the Governors may recall parties to clarify points of uncertainty relating to information already given. If this is necessary, both parties will return, even if clarification is required from only one party.
- 6.10 In reaching their decision the Governors Committee will consider the following questions :
- Has there been as thorough an investigation of the employee's lack of capability and the reasons for it as is possible in the circumstances?
 - Have the requirements of this procedure been met?
 - Has adequate consideration been given to any points that the employee has offered in her/his defence.
 - Is it reasonable to believe that the employee's lack of capability is likely to continue?
 - Consideration must be given to whether the employee's post can be modified in any way or alternative employment be considered in accordance with Appendix A.
 - Is the employee's lack of capability sufficiently serious to justify dismissal?
- 6.11 Following their deliberations the First Committee will have the delegated power to decide, any of the following :

- That there are insufficient grounds to determine that the employee is unable to carry out the requirements of her/his post due to lack of capability.
- That incapability has been proven in part, and that a further period of support should be provided to allow a further opportunity for improvement.
- The employee should be dismissed due to being unable to carry out the requirements of her/his post resulting from lack of capability, subject to her/his right to appeal to the Governors Appeal Committee.

6.12 Both parties will return and the chairperson of the First Committee will announce the decision. The decision must be confirmed to the individual in writing within seven working days, a copy of which will be sent to her/his representative and the Headteacher.

6.13 The employee will have the right to appeal against the decision of the Governors First Committee. Any appeal should be lodged, in writing to the Clerk of the Governors, within ten working days of receipt of the written confirmation of the Governors First Committee decision.

7. APPEALS

7.1 Appeals are not intended to allow for individuals to present the same information to a second panel and as such the grounds for appeal must be clearly stated. Notification of a disagreement with the first panels decision is not sufficient enough reason on its own as grounds for appeal.

7.2 On receipt of written notification of an appeal, the Clerk to the Governors, or other appropriate person should convene a Governors Appeals Committee as detailed in 3.4. Such Governors will, as a matter of course, be provided with copies of the Headteacher's Statement of Case presented to the First Committee, any papers presented in evidence by the employee to the First Hearing and the notes taken of the First Hearing by the note-taker identified in 3.4 above.

7.3 The employee should be informed in writing giving at least ten working days notice of the date of the Appeal Hearing.

Where possible more than one date and time for the Appeal Hearing should be given for the employee to choose from. The letter to the employee will confirm that s/he has the right to be represented at this Appeal Hearing.

- 7.4 The letter should request that the employee responds to the Clerk to the Governors with their preferred date for the Appeal Hearing to take place, no later than five working days before the earliest date offered to the employee in 7.3 above. At this time the employee should submit details of any witnesses and further papers other than that which were presented to the First Hearing that s/he intends to submit in evidence. Submitted papers will be made available to the Chair of the First Committee and the members of the Governors Appeals Committee in advance of the date of the Appeal Hearing. Should the employee not respond in accordance with the timescale identified in this paragraph above, then the Appeal Hearing will take place on the earliest of the dates offered under 7.3 above. Should the employee and/or her/his representative subsequently not attend the Appeal Hearing, the Appeals Committee will by default, uphold the original decision reached by the First Committee.
- 7.5 No new written evidence may be presented outside of the above timescales unless agreed by both parties.
- 7.6 The Appeal Hearing will proceed along the same lines as the First Hearing, in accordance with section 6, except that :-
- the employee and/or her/his representative will present the grounds for appeal and this will be followed by;
 - the case in support of the first decision which will be presented by the Chair of the First Committee.
- 7.7 The Appeals Committee may :
- Uphold the appeal.
 - Reject the appeal and confirm the sanction imposed by the First Committee. If the sanction was dismissal, the date of dismissal will take effect as at the date of the first hearing.

7.8 The decision of the Appeals Committee will be confirmed in writing to the employee within seven working days.

8. CONFIDENTIALITY

8.1 The issue of confidentiality is particularly important in a capability context. Staff within the school and Members of the Governing Body should only be kept informed on a '**need to know**' basis. This will remove the potential for any decision reached by either the First or Appeals Committee to be viewed as out of procedure and considered automatically unfair.

8.2 No Governor, or member of staff involved in the process, should on conclusion of a case keep a personal copy of any paperwork associated with a capability case. By necessity, personal copies of paperwork may be kept to aid the decision making process, and in the case of the Chair of the First Committee, to aid presentation to any Appeal Committee.

ALTERNATIVE EMPLOYMENT AND JOB REDESIGN

If the Governors make a determination to dismiss they must give due consideration to whether the employee's post can be modified, giving it a different balance of duties which the individual will be able to fulfil. Such considerations must be made with regard to the affect on the whole school.

If redesigning the post is not a practical possibility consideration must be given to the availability of alternative employment for the individual within the school.

Any offer of alternative employment should be made to the individual in writing, detailing the main terms and conditions, including any trial period arrangements as appropriate. The salary offered will reflect the grade of the alternative post and any salary difference will not be protected.

REVIEW PERIODS

There is no set requirement for the length of Review Periods, but, clearly, they must be fair, and sufficient to provide the employee with adequate opportunity to reach and then to demonstrate that they can sustain the realistic standards of performance required.

It is not incapability demonstrated over a short period of time, but failure to remedy it within a reasonable period of time which is at issue.

In general a period of six weeks is suggested for each stage of the procedure, however, any period can be agreed upto a maximum of two terms and with the minimum being four weeks [APPENDIX C] . In determining the length of review periods there may be a number of factors to consider such as the complexity of the work involved, the length of time in the post, the degree of seriousness of the lack of capability etc.

APPENDIX C

IRREDEEMABLE INCAPABILITY – ‘FAST TRACKING’

In exceptional cases, where it can be clearly demonstrated that the employee will be unable to respond to formal warnings and achieve an acceptable level of performance, or where her/his lack of capability creates an immediate danger to employee or public safety or where pupils education is in jeopardy, this procedure may be shortened as appropriate.

The decision regarding whether to shorten the procedure and to what extent they should be shortened will lie ultimately with the Headteacher, but any such decision must be taken following discussion with any LEA representative(s) involved in the process. The extent to which the procedure can be shortened will vary, depending on individual circumstances.

Where such irredeemable incapability is jeopardising pupil's education the period given for improvement after the date of entry into Formal Stage One of the procedure, if such a period is considered by the Headteacher to be necessary, will be no more than four weeks and a decision will be taken as to whether to hold an incapability hearing immediately following this.

In such circumstances the Headteacher should give consideration to suspending the employee on full pay pending an incapability hearing as laid out in Section 6.