Raddlebarn Primary & Nursery School

Capability Procedure for Support Staff

Adapted from Birmingham HR for School document

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1.0 Purpose

1.1 The governing body and the headteacher have a responsibility to help and encourage all staff to maximise their performance, to ensure the highest level of education provision for children.

1.2 Birmingham City Council (BCC) is committed to enabling employees to achieve and maintain a high standard of performance in the workplace. To this end it will ensure that standards are clearly defined and communicated, performance is assessed and that employees are given appropriate training and support to meet these standards.

1.3 Where performance improvement is required, this should be identified and dealt with promptly, and the focus of both the employee and managers efforts must be to work together to improve standards.

1.4 This procedure is therefore designed to provide a fair and consistent method of achieving this requirement and dealing with poor performance.

2.0 Scope

2.1 This procedure applies to all support staff in schools and academies with the exception of:

- Support staff during their probationary period
- Agency workers
- Contractors

2.2 This procedure is to be implemented where an employee falls below a certain level of competence and professional standards which is expected of them on a regular basis, despite appropriate additional support provided through the annual appraisal process to address serious concerns previously notified to the employee.

2.3 Where the employee is incapable of performing their duties as a result of sickness, injury or disability, the appropriate procedure shall be used.

3.0 Introduction

3.1 In this procedure: -

- the 'Local Authority' or the 'Authority' means Birmingham City Council acting in its capacity as a Local Education Authority.
- Any reference to a 'school', also includes an 'academy'.
- 'employee' means a non-teaching employee who is employed to work at the school as a member of support staff.
- reference to a 'headteacher' includes a 'principal' in an academy as
- appropriate; and Any reference to a committee of the governing body also includes an 'academy trust', 'board of directors/trustees' or equivalent body for an academy.

- The employee's "chosen companion" is defined in employment law as a trade union representative or a co-worker at the same workplace chosen by the employee.

3.2 As part of their acknowledged management responsibilities, and as part of the arrangements for the supervision, appraisal, support and training of employees, headteachers or other staff designated by the headteacher may from time to time discuss aspects of capability with an employee on a day-to-day basis. Such discussions should not be regarded as falling within the scope of the formal capability procedure but should ensure that employees receive fair and honest feedback on their performance, a balanced assessment, and advice and support on how their performance may be improved.

3.4 The procedure is to be implemented with the intention of supporting the employee to improve and to meet the requirements of their job. The employee needs to be aware that failure to make the necessary improvements within the timescales set out in this procedure may lead to termination of their employment.

3.5 In order to facilitate the smooth implementation of this procedure the employee should be advised to contact their trade union representative for advice as soon as possible.

3.6 The procedure is distinct from the disciplinary procedure which should be used in cases of misconduct.

3.7 Normal standards of capability and normal procedures should apply to employees who are school trade union representatives or local union officers, except that no action will be taken until the circumstances of the case have been discussed with a local or regional officer.

3.8 This procedure will be applied in accordance with the Instrument of Government of the school, any other statutory provisions which may apply from time to time and/or the Advisory, Conciliation and Arbitration Service's Code of Practice.

3.9 The records of any case under this procedure will be confidential.

3.10 The governing body may decide, by formal resolution, to delegate to the headteacher the hearing of cases under section 9 of this procedure, provided that they have not been previously involved in managing the case

4.0 Informal Meeting under Appraisal

4.1 This procedure is intended to highlight concerns in performance and provide an opportunity for an employee to improve. **It is strongly recommended that this procedure is only implemented where the appraisal process and appropriate support provided have failed to improve the performance to the required standards. This procedure should only be implemented if the headteacher or other designated manager has sufficient recorded evidence from a variety of sources.**

4.2 **Any concerns should have been raised with the employee in advance as part of the appraisal process.** If it became apparent during or at the end of the appraisal period that the employee's overall performance was below acceptable standards the headteacher or other designated manager should have:

- met with the employee to discuss the nature and level of the concerns,
- recorded the concerns as part of the Appraisal Scheme; and
- given the employee the opportunity to reflect on it before arranging another meeting to determine what increased support would be given, the

kind of improvement required, the period for improvement, how improvement would be assessed and when the situation would be reviewed. The headteacher or other designated manager should have explained to the employee what would happen if they did not meet the required standards within the specified timescales.

4.3 During the appraisal process and throughout this procedure, consideration should be given to any mitigating or personal circumstances (including a disability or other health condition) which might explain a dip in the employee's performance. Reasonable adjustments may be considered if an employee has specific needs relating to a disability. A referral to Occupational Health may also be appropriate.

5.0 Capability Meetings

5.1 The headteacher or designated manager shall review the facts and information gathered to date, adding to it where appropriate, and then write to the employee setting out the area(s) of concern and the evidence supporting those concerns and inviting the employee to a formal capability meeting. From this stage onwards the employee may be accompanied by a chosen companion. In addition, a school can request that an appropriate HR Manager attends to provide technical advice.

5.2 The invite letter shall explain to the employee that the meeting is being held in accordance with the provisions of this procedure. Copies of any documentation to be used at the meeting shall be sent with the written invite letter within a reasonable timescale before the meeting to ensure that the employee has enough time to prepare their response to the concern(s). A copy should be included for the employee's chosen companion.

6.0 First Capability Meeting

6.1 The purpose of the meeting shall be: -

(a) to define which areas of the employee's role are not being met in line with the requirements of the role and the effect this is having on pupils, staff and the provision of education or service in the school.

(b) to invite the employee and/or the employee's chosen companion to comment and/or explain the alleged shortfalls in performance.

(c) to have regard to (a) and (b) above, whether their concern(s) remain and if no concern remains, for the headteacher or other designated manager to confirm in writing that no further action will be taken.

(d) if concerns remain, for the headteacher or other designated manager to inform the employee of those concerns and decide what reasonable targets are to be set, (via an employee support plan, including a range of thorough, suitable support). This should include clarification of how long each part of the support plan shall last, and how it shall be monitored and evaluated.

(e) where (d) applies, to arrange for the employee support plan to be reviewed in a second capability meeting, to be held 7-8 working weeks after the first capability meeting and set the date and time for that meeting in discussion with the employee and the employee's chosen companion.

6.2 Notes of the meeting, including the employee support plan shall be sent to the employee within 2 working days of the meeting together with a copy for their chosen companion.

7.0 Second Capability Meeting

7.1 At the second capability meeting progress will be reviewed against the targets, standards, and employee support plan. Copies of any evidence to be presented on the employee's performance should be sent to their in reasonable time beforehand, including a copy for their chosen companion. The employee and/or the employee's chosen companion will have the opportunity to comment upon their performance and make appropriate representations

The purpose of the meeting shall be: -

(a) to define which areas of the employee's role are not being met in line with the requirements of the role and the effect this is having on pupils, staff and the provision of education or service in the school.

(b) to invite the employee and/or the employee's chosen companion to comment and/or offer an explanation for the alleged shortfalls in performance.

(c) To have regard to (a) and (b) above, whether their concern(s) remain and if no concern remains, for the headteacher or other designated manager to confirm in writing that no further action will be taken.

(d) if concerns remain, inform the employee, and decide what reasonable targets are to be set (via a support plan, including a range of thorough, suitable support). This should include clarification of how long each part of the support plan shall last, and how it shall be monitored and evaluated.

(e) where (d) applies, arrange for the employee support plan to be reviewed in a third meeting, which can be held 6-7 working weeks after the second meeting, and set the date and time for that meeting in discussion with the employee and the employee's chosen companion.

(f) Where (d) and (e) applies, explain to the employee that if the improvement which is still required has not been achieved by the date of the third meeting the matter will be referred for a hearing before a committee of governors (or, depending on the governing body's delegations, if the headteacher has not been involved previously in the management of the employee's performance) which may lead to the termination of the employee's employment in accordance with this procedure.

7.2 Notes of the meeting, including where applicable the employee support plan, monitoring and evaluation and the explanation about the possibility of terminating the employee's employment, shall be sent to the employee within 2 working days of the meeting together with a copy for the employee's chosen companion.

8.0 Third Capability Meeting

8.1 The third capability meeting will take place 6-7 weeks after the second capability meeting. The employee will normally be given a minimum of 5 working days' notice of the meeting. Progress will again be reviewed against the agreed targets, role requirements and employee support plan, subject to any modifications to these as a result of the second meeting. As with the previous meetings, copies of the evidence on the employee's performance should be sent to the employee in a reasonable time beforehand, with a copy for the employee's chosen companion. The employee will have the opportunity to comment on their performance during the last monitoring period. At the conclusion of the meeting the headteacher or other designated manager will either:

(a) decide that the employee now meets the requirements of the role and that this procedure is terminated, which will be confirmed in writing; or

(b) extend the employee support plan for a further reasonable period if there is a prospect of the employee meeting the requirements of the role within this time; or

(c) refer the matter to a committee of the governing body (or, depending on the governing body's delegations, before the headteacher provided, they have not been involved previously in the management of the employee's performance) with a recommendation that the employee's employment be terminated on the grounds of professional capability.

8.2 The third meeting shall be recorded in writing and notes (plus supporting evidence) shall be sent to the employee within 2 working days of the meeting together with a copy for their chosen companion.

9.0 Hearing

9.1 When it has been decided to refer the employee's capability concerns to a committee of the governing body (or, depending on the governing body's delegations, before the headteacher if they have not been involved previously in the management of the employee's performance) a hearing shall be arranged as set out below.

9.2 There may be cases in which an employee is simultaneously the subject of allegations being considered under one or more of the governing body's procedures for conduct, capability, or redundancy. If so, advice should be taken from their chosen Employee Relations team or appropriate HR Manager.

9.3 A formal notice to an employee to attend a hearing should be issued in writing, with an explanation of the hearing's purpose and its place in the procedure. The letter should not only state the reasons for the hearing but should also attach copies of any documents to be used at the hearing. The letter must remind the employee of the right to be accompanied or represented. The employee should be asked to confirm that they

will be attending the hearing, who will be accompanying or representing their chosen companion, and a list of any witnesses attending. The employee/ trade union should also be reminded to provide this information along with any documentation on which they wish to rely at least 5 working days before the hearing.

9.4 Names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for inclusion with the documents to be used at the hearing. A second set of papers should be enclosed for the employee's trade union representative.

9.5 In order to ensure that the employee has enough time to prepare their response at least 10 working days' notice of the hearing should be given. It is helpful to agree a date with the employee's union/professional association before sending the formal notice to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The committee or headteacher (as the case may be) may reject this suggestion but will do so only if it is unreasonable when they may proceed to hear the case in the absence of the employee or the employee's trade union representative. Advice should be taken from their chosen Employee Relations team or appropriate HR Manager on what is reasonable.

The employee may provide documentation in their defence and give the names of witnesses whom they are asking to appear on their behalf. It is recommended that witnesses attend formal hearings in support of their written statements. This information should be provided at least 5 working days before the hearing. Where the hearing is before a committee of the governing body the clerk to the governing body is required to ensure that all parties to the hearing receive copies of all documents in good time before the hearing (at least 5 working days before). Evidence submitted after the distribution of these documents may or may not be accepted as evidence; in such circumstances a decision will be made by the chair of the committee (or the headteacher if they are conducting the hearing) in the hearing itself, and not before. There is no requirement on the employee to submit any documentation, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee and/or the employee's trade union representative to this effect. Neither side will be able to use at the hearing any evidence not previously provided.

9.6 The headteacher or designated manager should normally present the case to the committee, unless the headteacher is the subject of the hearing, in which case the chair of the committee should seek the advice of the local authority (through one of the School and Governor Support Managers or other appropriate advisors) on an appropriate person to present the case.

9.7 The School Staffing Regulations provide that the headteacher is entitled to attend all governing body meetings to give advice if the meeting may relate to a determination that a person employed at the school should cease to work there (or be dismissed in the case of a voluntary aided or foundation school). The governing body must consider such advice. Whilst the School Staffing Regulations do not apply to academies, it is good practice for the principal to attend any final hearings or formal meetings for the purposes of giving advice.

9.8 The hearing will follow the procedure recommended by the local authority.

9.9 After considering the relevant evidence, the committee (or the headteacher if they are conducting the hearing) has the following options and shall decide on one of them:

- take no action against the employee
- determine that a further defined period for improvement should be allowed
- determine that the employees should cease to work at the school (in the case of an employee in a community, community special, voluntary controlled or maintained nursery school) or may dismiss the employee from a voluntary aided or foundation school on the grounds of professional capability.

9.10 The committee (or headteacher where appropriate) shall announce its decision to the parties in person or subsequently in writing as the committee shall determine. An oral announcement shall be confirmed in writing within 2 working days of the meeting, including the right of appeal.

9.11 A notification of a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school shall include a statement that the local authority will be advised of the determination to enable it to confirm dismissal as required by law. It shall also give details of the right of appeal (see below). A notice of

dismissal from a voluntary aided or foundation school shall give details of the right of appeal.

9.12 The committee (or the headteacher if they have conducted the hearing) will take advice from their chosen Employee Relations or another appropriate HR Manager on the duties to be undertaken by the employee during the notice period.

10.0 Appeals

10.1 An employee has the right of appeal against the decision of the committee or headteacher who has conducted the hearing. An appeal shall be to the appeal committee established by the governing body.

10.2 An employee may appeal by giving written notice of the appeal and of all the grounds on which it is being made to the clerk to the governing body within 5 working days of receiving written confirmation of the decision. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. There is no requirement to submit any documentation if the employee does not wish to, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee and/or their trade union representative to this effect and the employee will not be able to use at the hearing any evidence not previously circulated to the parties in advance.

10.3 The clerk to the governing body will immediately notify the headteacher or the person representing the committee (whichever took the decision against which the employee is appealing) of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within 5 working days.

10.4 The clerk to the governing body will then arrange an appeal hearing in reasonable time. The clerk shall give at least 5 working days' formal notice of the date, time and location of the appeal hearing to all participants. All documents relevant to an appeal hearing shall be enclosed with the letter. The employee/trade union rep may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or their trade union representative, it also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date.

10.5 The witnesses may include, as appropriate to the circumstances of the case, the headteacher and/or a member of the committee who took the decision against which the employee is appealing, or the person who presented the case if that person was not the headteacher.

10.6 The order of proceedings for an appeal hearing will follow the procedure recommended by the local authority. The appeal committee will have regard to any guidance issued from time to time by the local authority on conducting an appeal hearing.

10.7 The appeal committee may dismiss the appeal, uphold the appeal, amend the period defined for further improvement, or substitute a defined period for further improvement for a determination that an employee should cease to work at the school or a dismissal from the school.

10.8 The employee may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral announcement shall be confirmed in writing by the clerk to the governing body within 5 working days of the appeal hearing. If an appeal against a determination to cease to work at a community, community special, voluntary controlled or maintained nursery school is upheld, the letter of notification will state that the local authority will be notified immediately so that it can withdraw the letter of dismissal and reinstate the appellant without a break in service. If an appeal against dismissal from a voluntary aided or foundation school is upheld, the letter of notification will include a withdrawal of the dismissal and reinstatement without a break in service.

11.0 Exceptional Circumstances

11.1 In extreme cases the headteacher may need to fast track this procedure and start at the second capability meeting stage. If so, the headteacher shall write to the employee explaining that they consider that this is an extreme case in which the education of pupils is seriously jeopardised, setting out the evidence supporting this allegation, and inviting the employee to a meeting, at which the employee may be accompanied by a chosen companion. It shall be explained to the employee that the meeting is being held in accordance with the provisions of this section of the procedure. Copies of any documentation to be used at the meeting shall be sent with the written notice. To ensure that the employee has enough time to prepare their response to the concern(s), reasonable notice of the meeting should be given. This should be at least 5 working days. It is advisable to agree a date with the employee's union/professional association before sending the formal invite letter.

11.2 The purpose of the meeting shall be: -

(a) to define the aspects of capability which lead the headteacher to allege that the education of pupils is jeopardised and why it is not appropriate to use or continue to use the other sections of this procedure.

(b) to allow the employee and/or their trade union representative to comment and/or offer an explanation.

(c) for the headteacher to decide, having regard to (a) and (b), above whether to confirm or withdraw the allegation(s) of lack of capability which seriously jeopardise the education of the pupils.

(d) for the headteacher, in the light of (c) above, to take one of the following options

- take no further action under this section of the procedure.
- start capability meetings at the second formal capability meeting, thereby omitting the first meeting under section 6. Under such circumstances, the employee must be informed of the reasons for taking such action.

Under (d) above the head teacher may decide to arrange for direct supervision of the employee's work for a specified period during the review period.

11.3 A copy of the notes of the meeting shall be sent to the employee within 2 working days of the meeting together with a copy for their trade union representative.

11.4 The headteacher should arrange for a review meeting to be held weekly during the review period. The dates of these meetings should be set in discussion with the employee and their trade union representative.