



KALEIDOSCOPE
Multi Academy Trust

Appraisal and Capability Policy

September 2018

Contents

Appraisal and Capability Policy

Introduction	4
Purpose	5
Consistency of Treatment and Fairness	5
Definitions	5
Delegation	6
Application of the Policy	7

Part A – Appraisal 7

Purpose	7
The Appraisal Period	7
Appointing Appraisers	7
Setting Objectives	8
Reviewing Performance	9
Observation	9
Development and Support	9
Feedback	10
Transition to Capability	11
Annual Assessment	11
Retention of Statements	12
Monitoring and Evaluation	12
Additional Statement on Confidentiality	13

Appendices

Note: for Appendices A1-A8, see separate documents

A1: Invitation to Appraisal Meeting	
A1a: Preparation for Review Discussion	
A1b: Progress against Previous Objectives	
A2: Evidence for Review Discussion	
A3: Appraisal Process – Tracking Sheet	
A4: Appraisal Report	
A5: Objectives and Observation	
A6: Training and Development Plan	
A7: Interim Review	
A8: Revision Agreement	
A9: Class Observations – Appraisal Protocol	15

Part B – Capability 17

Policy	17
Introduction	17
Scope and Link to Other Policies	17
Procedure	18
First Formal Capability Meeting	18
Second Formal Capability Meeting	19

Appraisal and Capability Policy	
Capability Review Meeting	20
Capability Hearing (Governors Panel)	20
Appeal	21
Decision to Dismiss	22
Capability Policy – Supplementary Paragraphs	22
Arrangements for Formal Meetings and the Capability Hearing	22
Attendance at Meetings	23
Currency of Formal Warnings	23
Serious Cases of Underperformance	23
Records of Formal Meetings	23
Appeals	24
Requesting a Change in Role	24
Monitoring and Review Periods	24
Records	25
Appendices	
B1 General Principles Underlying the Capability Policy	26
B2 Capability Procedure Flow Diagram	28
B3 Appeals Flow Diagram	29
B4 Protocol for Capability Hearing	30
B5 Note on the Protocol for the Appeal Hearing	33

Appraisal and Capability Policy for all Staff in School

(Including Unattached, Centrally Employed Teachers)

Note: this policy combines the statutory requirements and elements of guidance of the DfE Policy with additional local guidance that is both new and adapted from the previous North Somerset Performance Management Model Policy.

INTRODUCTION PART I

1.1 The Appraisal Regulations set out the principles that apply to teachers in all maintained schools and unattached teachers employed by a local authority, in each case where they are employed for one term or more.

1.2 Schools and local authorities must stay within the legal framework set out in the Appraisal Regulations and in other relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).

1.3 This policy has been consulted on widely, including with all recognised Trade Unions and Headteacher Associations in North Somerset. Consultation does not imply agreement.

1.4 This policy should be read in conjunction with the school's Pay Policy which provides details of the arrangements relating to teacher's pay in accordance with the School Teachers' Pay and Conditions Document and also in conjunction with the school's CPD Policy and LA guidance on pay and conditions of Support Staff.

Please note that the STPCD now links pay progression to performance (and therefore appraisal) for all teachers.

See also Paragraph B3 'Scope and Links to Other Policies' in Capability Part of this Policy.

INTRODUCTION PART II

Note: * from here, Teachers and Support Staff may be referred to as 'colleagues' or 'staff'.

2.1 Schools and local authorities must have an appraisal policy for teachers and a policy, covering all staff, which deals with lack of capability. This policy applies to teachers, including Headteachers and Support Staff*. (support staff refers to all non-teaching staff) It has been written in the context of schools, but the same principles apply to unattached teachers.

2.3 The Local Authority advises that it is good practice for schools to consult staff on their appraisal and capability policies. This model policy has been provided as guidance for school governors and others to which they can refer as they wish as they review and develop their own policies.

INTRODUCTION PART III

Appraisal and Capability Policy

3.1 The Trust board of Kaleidoscope Multi Adademy Trust school's adopted this policy on 10th October 2018.

3.2 It will review it in one year's time.

PURPOSE

3.3 Kaleidoscope Multi Adademy Trust needs all staff to perform effectively in order to deliver the aims and vision of the school. To achieve this, the school aims to ensure that effective recruitment is undertaken, performance expectations and standards are defined through the Appraisal framework, performance is monitored and that employees are given appropriate feedback, support and training.

3.4 This policy sets out the framework for a clear and consistent appraisal of the overall performance of staff, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected.

3.5 It also sets out the arrangements that will apply when teachers fall below the levels of competence that are expected of them.

CONSISTENCY OF TREATMENT AND FAIRNESS

3.6 Kaleidoscope Multi-Academy Trust is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

DEFINITIONS

3.7 Unless indicated otherwise, all references to "teacher" include the Headteacher.

3.8 Please note that where 'trade union representatives' or 'trade unions' are referred to in the text of this Policy, what is meant is the designated North Somerset Council Representative or Regional Official of each Recognised Trade Union (not the school-level representatives of those Trade Unions). The exception to this is where reference is made to employees having the right to be accompanied by a trade union representative or work colleague. In this instance, the choice of representative would be made by the Trade Union in consultation with the individual employee as necessary.

DELEGATION

3.9 Normal rules apply in respect of the delegation of functions by Trustees, Local Governing Bodies, Headteachers and local authorities.

INTRODUCTION PART IV

APPLICATION OF THE POLICY

4.1 The policy is in two separate sections.

4.2 **Part A of the policy, which covers appraisal, applies to the Headteacher**

and to all teachers and support staff employed by the school or local authority, except those on contracts of less than one term, those undergoing induction (i.e. NQTs) and those who are subject to Part B of the policy. Where provisions are specific to teachers or to support staff this will be made clear.

4.3 There are no national appraisal regulations which apply to support staff and there is no national agreement on appraisal with support staff unions. However at Kaleidoscope, the guidance framework and model policy includes support staff and the recommended process is aligned with that of the North Somerset Council Appraisal process which has been agreed with local Unions. This local guidance for schools captures many elements of the revised arrangements for teachers.

4.4 Part B of the policy, which sets out the formal capability procedure, applies only to staff about whose performance there are serious concerns that the appraisal process has been unable to address.

PART A – APPRAISAL

A1 PURPOSE

A1.1 Appraisal in Kaleidoscope schools will be both a developmental and supportive process designed to ensure that staff are able to continue to improve their professional practice. Appraisal will set objectives and provide support so staff have the skills they need to carry out their role effectively and with reference to the appropriate standards. Appraisal is only one element of the performance management of an individual member of staff. The appraisal process should be seen in this context.

A2 THE APPRAISAL PERIOD

A2.1 **The appraisal period will run for twelve months from 1st September to 31st August.**

A2.2 Staff who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. **The length of the period will be determined by the duration of their contract.**

A2.3 There is flexibility to have a longer or shorter appraisal period when teachers begin or end employment with a school or local authority or when unattached teachers change post within the same authority.

A2.4 For support staff who are new to the school the probationary period assessments provide an appropriate lead into the setting of short term objectives until the colleague can be synchronised with the school Appraisal cycle.

A2.5 To follow good practice we will arrange for:

- Meetings to be scheduled with at least five days' notice.
- Full Time staff - appraisal meetings should take place within the established directed time (teachers) schedule. Working hours for support staff. If this proves to be impracticable the appraiser must agree alternative arrangements that are acceptable to the appraisee.
- Part time staff - appraisal meetings should take place within the established directed time (teachers) schedule. Working hours for support staff. Deployment circumstances should be considered when scheduling meetings.

A3 APPOINTING APPRAISERS

A3.1 **The Headteacher will be appraised by the Local Governing Body, and CEO, supported by a suitably skilled and/or experienced external adviser who has been appointed by the Board of Trustees for that purpose.**

A3.2 In Kaleidoscope schools the task of appraising the Headteacher, including the setting of objectives, will be delegated to a sub-group consisting of two members of the Governing Body and the Kaleidoscope CEO.

A3.3 The Headteacher will decide who will appraise other staff.

A3.4 Only members of staff with QTS may be appraisers for teachers.

A4 SETTING OBJECTIVES

A4.1 The Headteacher's objectives will be set by the Governing Body and CEO after consultation with the external adviser.

A4.11 The CEOs objectives will be set by a committee formed from the Trust Board.

A4.12 The PFOs objectives will be set by a committee formed from the Trust Board and the CEO.

A4.2 Objectives for each teacher and member of support staff will be set before, or as soon as practicable after, the start of each appraisal period. In this school, teachers will be set objectives by 31 October, wherever possible. The objectives set for each appraisee will be Specific, Measurable, Achievable, Realistic and Time-bound and will be appropriate to role and level of experience and will reflect priorities for an individual for the cycle. The number of objectives set should be reasonable. The appraiser and appraisee will seek to agree the objectives but, if that is not possible, the appraiser will determine the objectives. Objectives may be revised if circumstances change. See below (final paragraph of A4). (Refer to Appendix Form A5)

A4.3 The school will follow good practice which suggests:

- A school-wide agreement on the appropriate number and type of objectives for staff at different levels of experience is helpful.
- Whole school, team and individual objectives are often very supportive.
- *Any objectives should allow the contribution/impact of the individual teacher to be assessed (this is especially the case for teachers due to the link between progress towards/the meeting of objectives and pay progression).*

A4.4 Though appraisal is an assessment of overall performance, objectives cannot cover the full range of roles/responsibilities. Objectives will, therefore, focus on the priorities for an individual for the cycle.

A4.5 At the report stage, it will be assumed that any aspects of an appraisee's roles/responsibilities not covered by the objectives have been carried out satisfactorily, with reference to the appropriate standards, unless otherwise stated.

A4.5 The appraiser will judge whether objectives set in one cycle should continue to be relevant in the next cycle because of the progress towards this objective and the circumstance; such a judgement will be recorded in the review report.

A4.6 The objectives set for each teacher and member of support staff will, if achieved, contribute to the school's plans for improving the school's educational provision and performance and improving the education of pupils at that school. For Support Staff objectives may also relate to the effective deployment and use of resources, administration and organisation.

A4.7 For whole school or team objectives especially, objectives will reflect published

A4.8 Before, or as soon as practicable after, the start of each appraisal period, each teacher and member of support staff will be informed of the standards against which that teacher's or member of support staff performance in that appraisal period will be assessed.

A4.9 All teachers should be assessed against the set of standards contained in the document called "Teachers' Standards" published in July 2011. The Headteacher or governing body (as appropriate) will need to consider whether certain teachers should also be assessed against other sets of standards published by the Secretary of State that are relevant to them.

A4.10 On occasions during a review cycle, usually as a result of unplanned circumstances, it may be considered that an objective set at the start of the process is no longer appropriate or requires some adjustment. Either at the Interim Review stage or an additionally scheduled meeting, changes can be agreed using the Revision Statement - Appendix Form A8.

A5 REVIEWING PERFORMANCE

A5.1 OBSERVATION (Also refer to Appendix A9)

A5.1.1 This school believes that observation of classroom practice (including that of classroom based support staff) and key responsibilities is important both to assess performance and identify any particular strengths and areas for development a colleague may have and for gaining useful information which can inform school improvement more generally. All observations will be carried out to support a culture of continuous improvement and will be a developmental activity.

A5.1.2 Teachers' performance will be regularly observed. The three hour statutory limit on classroom observations for appraisal has been removed. It may be that three hours is sufficient, however the amount and type of classroom observation will depend on the individual circumstances of the teacher and the overall needs of the school - the principle of 'proportionate to need' - and will normally be decided through discussion with the individual and informed by how much observation is necessary to make an accurate assessment of a teacher's performance. The appraiser and appraisee will seek to agree the amount and type of classroom observation, but, if that is not possible, the appraiser will determine the amount and type of classroom observation. Classroom observations will be carried out by those with Qualified Teacher Status and in accordance with the 'Classroom Observation - Appraisal Protocol', Appendix A9.

- *All observations should be planned, with an agreed focus and linked to objectives. (See Appraisal Form A5.)*
- *Observations should be agreed with at least 5 working days notice.*

A5.1.3 Teachers (including the Headteacher) who have responsibilities outside the classroom should also expect to have their performance of those responsibilities observed and assessed.

A5.1.4 Members of support staff who are not based in the classroom will also be

Appraisal and Capability Policy

involved in a work review/observation process in a format agreed as being appropriate to role. (For example the appraiser “sitting in” with office staff). The number of observations will vary depending on the developmental objectives of individual colleagues and the principle of ‘proportionate to need’ and will normally be decided through discussion with the individual.

A5.1.5 Judgments relating to performance should be supported by a range of evidence. The evidence gathered should be agreed at the beginning of the performance cycle and determined by the nature and scope of the agreed objectives. As well as classroom observations additional evidence may include task observations, drop-in observations, learning walks, talking to pupils about their learning, review of pupil assessment outcomes, internal tracking of pupils’ attainment and progress, work sampling, lesson planning records, self-assessment and peer reviews. It may not always be practical to provide advance notice of these additional monitoring activities.

A5.2 DEVELOPMENT AND SUPPORT

A5.2.1 Appraisal is a developmental and supportive process which will be used to inform continuing professional improvement. The school wishes to encourage a culture in which all staff take responsibility for improving their performance through appropriate professional development. Professional development will be linked to school improvement priorities and to the ongoing professional development needs and priorities of individuals and teams.

A5.2.1 As such, the school’s CPD programme will be informed by the development needs identified through self evaluation and individuals development needs.

A5.2.2 The Governing Body will make appropriate but affordable resources available to support staff development arising from the appraisal process. The Headteacher will report – as required – to the Full Governing Body each year on CPD activities.

A5.2.3 Where CPD is identified as key to the improvement of an individual, they should not be held responsible for lack of progress against agreed priorities if the resources are not forthcoming / have not been provided.

A5.3 FEEDBACK

A5.3.1 Colleagues will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas that need attention.

A5.3.2 Where there are concerns about any aspects of the employee’s performance they will receive appropriate support as part of the appraisal process. The support to be offered will be agreed in advance and may, for example, for teachers to include classroom observation alongside additional training or visits to other classes.

A5.3.3 In these circumstances the appraiser / or other colleague will meet the employee formally to:

- give clear feedback about the nature and seriousness of the concerns;
- give the colleague the opportunity to comment and discuss the concerns;

Appraisal and Capability Policy

- identify any support (eg coaching, mentoring, structured or peer observations), that will be provided to help address those specific concerns;
- make clear how, and by when, the appraiser (or other colleague) will review progress but allowing sufficient time for improvement and this may include further supportive observations. The amount of time is up to the school but should reflect the seriousness and the nature of the concerns) (see Transition to Capability Section);
- explain the implications and process if no or insufficient improvement is made, (i.e. progression to the capability procedure (see Transition to Capability Section)).

A5.3.4 The outcome of any such meeting will be confirmed in writing to the employee.

A5.3.5 When progress is reviewed, if the appraiser or other colleague is satisfied that the employee is making sufficient improvement, this will be acknowledged and celebrated and the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

A5.3.6 Schools could choose to allow the employee's trade union representative to attend meetings at the employee's request if concerns arise about the employee's performance and there is a possibility that there could be a transition to the capability procedure.

A5.4 TRANSITION TO CAPABILITY

A5.4.1 If the appraiser or other colleague is not satisfied with progress, the member of staff will be notified in writing that the appraisal process will no longer apply and that their performance will be managed under the capability procedure; they will be invited to a formal capability meeting. The capability procedures will be conducted as in part B of this policy.

A5.4.2 It is recommended in the case of Headteachers that the sub-group of governor that have been appraising the Headteacher and CEO conduct the Formal Capability Meetings and the Capability Review Meeting for reasons of continuity. In the case of other employees, the manager who has been appraising the employee would normally conduct the Formal Capability Meetings and the Capability Review Meeting where possible.

A5.5 ANNUAL ASSESSMENT

A5.5.1 Each teacher's and member of support staff's performance will be formally assessed in respect of each appraisal period. In assessing the performance of the Headteacher, the Governing Body must consult the external adviser. The CEO and PFOs performance will be judged by the designated Trust Board committee.

A5.5.2 This assessment of performance and development priorities will be reviewed throughout the year. A formal Interim Review Meeting will take place approximately mid year from the start of the process. Less formal 'catch-ups' may also feature and are part of a well-functioning appraisal process alongside routine management arrangements.

A5.5.3 At the end of the cycle assessment of performance against an objective will be on the basis of the performance criteria set at the beginning of the cycle. Good progress towards the achievement of a challenging objective, even if the performance criteria have not been met in full, should be assessed favorably.

A5.5.4 **Teachers will receive their written appraisal report as soon as is practicable following the end of each appraisal period** – and have the opportunity to comment in writing on this. In this school, teachers will receive their written appraisal reports by 31 October, wherever possible (31 December for the Headteacher).

A5.5.5 Support staff will receive their written appraisal report as soon as practicable following the end of each appraisal period – and have the opportunity to comment in writing on this. In this school, support staff will receive their written appraisal reports by 31 October.

A5.5.6 **The appraisal report will include:**

- Details of their objectives for the appraisal period in question;
- **An assessment of the teacher's or member of support staff's performance of their role and responsibilities**, including the quality of teaching, **against their objectives and the relevant standards, their level of responsibility and experience.**

- **An assessment of the teacher's or member of support staff's training and development needs and identification of any action that should be taken to address them;**
- **A recommendation on pay (this will apply to all teachers);**
Note: – Pay recommendations need to be made prior to a meeting of the School's Pay Committee, whenever this is scheduled (if feasible before 31st October or 31st December, as appropriate)

A5.5.7 The assessment of performance and of training and development needs will inform the planning process for the following appraisal period.

A6 RETENTION OF STATEMENTS

A6.1 Appraisal documentation will be retained for a minimum period of 6 years in a secure place and then destroyed. (Refer also to the Confidentiality section)

A7 MONITORING AND EVALUATION

A7.1 The governing body will review the impact of appraisal.

A7.2 The Headteacher will provide the Governing Body with a written report on the operation of the school's appraisal policy annually. The report will not contain any information which would enable any individual to be identified. The report should include:

- The operation of the appraisal policy;
- The effectiveness of the school's appraisal procedures;
- Staff training and development needs.

The Governing Body is committed to ensuring that the appraisal process is fair and non-discriminatory and the information below should be included in the Headteacher's report. The Headteacher should assess the impact of the process and of performance objectives to ensure that they do not represent possible grounds for unlawful discrimination in regard to any of the relevant protected characteristics under the Equality Act 2010, part-time work, fixed term contracts or trade union membership.

A7.3 The Headteacher should, therefore, also report annually to the Governing Body, in a confidential section, appropriate details of:

- Any appeals or representations on an individual or collective basis on the grounds of alleged discrimination under any of the categories above in relation to appraisal.
- Cases, including the circumstances, where teachers have not made satisfactory progress towards objectives to the Pay Committee.
- Any instances where the training and development set out in the training and development annex of an appraisal has not been provided.
- Number who have fully achieved objectives.
- Number who have partially achieved objectives but with acceptable reasons.
- Number who have partially achieved objectives but with unacceptable

Appraisal and Capability Policy

reasons.

- Number who have not achieved their objectives.
- Number of those who have partially achieved objectives but with unacceptable reasons and those who have not achieved their objectives and/or whose quality of teaching 'requires improvement' who are due to progress within the unqualified pay range.
- Number of those who have partially achieved objectives but with unacceptable reasons and those who have not achieved their objectives and/or met the teacher standards and/or whose quality of teaching 'requires improvement' who are due to progress:
 - within the upper pay range;
 - within the main or upper pay range, the lead practitioner range or the leadership range.

A8 ADDITIONAL STATEMENT ON CONFIDENTIALITY

A8.1 In exceptional circumstances, the School's Appraisal Practices could be subject to an Internal Audit by the Local Authority or other body. In this instance, any affected staff would be advised of the rationale / reasons for the Audit and that their Assessment paperwork might be reviewed for this purpose.

APPRAISAL APPENDICES

Please see separate documents for Appendices A1 to A8.

These Appendices are forms designed to be used in the course of the Appraisal process.

The forms are as follows:

- A1: Invitation to Appraisal Meeting
- A1a: Preparation for Review Discussion
- A1b: Progress against Previous Objectives
- A2: Evidence for Review Discussion
- A3: Appraisal Process – Tracking Sheet
- A4: Appraisal Report
- A5: Objectives and Observation
- A6: Training and Development Plan
- A7: Interim Review
- A8: Revision Agreement
- A9: Classroom observation protocol

APPRAISAL APPENDIX A9
CLASSROOM OBSERVATION - APPRAISAL PROTOCOL FOR TEACHERS

The Governing Body is committed to ensuring that classroom observation is developmental and that those involved in the process will:

- carry out the role with professionalism, integrity and courtesy;
- evaluate objectively;
- report accurately and fairly; and
- respect the confidentiality of the information gained.

The arrangements for classroom observation will be included in the appraisal documentation and will include the purpose of observation, any particular aspects of the teacher's performance which will be assessed, the duration of the observation, when during the performance management cycle the observation will take place and who will conduct the observation.

Information gathered during the observation will be used, as appropriate, for a variety of purposes including to inform school self-evaluation and school improvement strategies in accordance with the school's commitment to streamlining data collection and minimising bureaucracy and workload burdens on staff.

In keeping with the commitment to developmental and supportive classroom observation of those being observed will be notified in advance. Classroom observations will only be undertaken by persons with QTS. In addition, in this school classroom observation will only be undertaken by those who have had adequate preparation and the appropriate professional skills to undertake observation and to provide constructive oral and written feedback and support in the context of professional dialogue between colleagues.

It is noted that the Headteacher may 'drop in' when appropriate to monitor standards – and this may be delegated to others in senior positions by the Headteacher.

Oral feedback will be given as soon as possible after the observation and unless this is not feasible, no later than the end of the following working day. It will be given in a suitable, private environment and unless this is not feasible, during directed time.

Written feedback will be provided within five working days of the observation taking place. If issues emerged from an observation that were not part of the focus of the observation as recorded in the planning and review statement these should also be covered in the written feedback and the appropriate action taken in accordance with the regulations and guidance.

The written record of feedback also includes the date on which the observation took place and details of the lesson observed. The teacher has the right to append written comments on the feedback document. No written notes in addition to the written feedback will be kept, except where a concern about a colleague's performance requires this.

Clearly the appraisal arrangements are integral to fulfilling this duty and Headteachers may consider the classroom observations agreed for appraisal for an individual colleague are sufficient and that drop in will not be needed. However, as

Appraisal and Capability Policy

the aim is developmental and the Headteacher's (or their representative's) knowledge of staff performance is potentially influential, this duty should not be waived or subsumed solely into appraisal arrangements.

Appraisal and Capability Policy
PART B: CAPABILITY

B1. POLICY

B1.1 Kaleidoscope Multi Adademy Trust seeks to ensure the effective performance of all its staff in order to deliver the aims and vision within its Schools. This policy is designed to support and encourage all employees (Headteacher, teaching and support staff) who are experiencing difficulties in achieving and maintaining satisfactory levels of performance through ensuring that performance expectations and standards are defined, performance is monitored and employees are given appropriate feedback, training and support to meet these standards. Kaleidoscope Multi Adademy Trust school's will ensure that all employees are treated fairly and consistently when addressing cases of underperformance. The general principles underpinning the appraisal and capability procedures are set out within Appendix B1.

B2. INTRODUCTION

B2.1 As part of the normal management and appraisal process Governors, Headteachers and other relevant school managers may from time to time discuss aspects of performance with a member of staff where there are concerns that an employee may not be performing to an acceptable standard. Such discussions will take place informally and do not come within the scope of the Capability Procedure. The status of these 'informal' discussions shall be made known to the employee. It is envisaged that most areas for concern can generally be dealt with through informal discussion and coaching.

B2.2 If it is the CEO or Headteacher who is subject to the Capability Procedure, the sub-group of Trustees (in the case of the CEO) Governors (in the case of Headteachers) responsible for the appraisal process should conduct the Formal Capability Meetings and the Capability Review Meeting. If it is another teacher or a member of the support staff the Headteacher or the relevant manager should conduct the Formal Capability Meetings and the Capability Review Meeting.

B2.3 Should an assessment be made that the employee's performance continues to be unsatisfactory, despite the employee being supported through the normal management and appraisal process the matter should be dealt with under this formal Capability Procedure.

B3. SCOPE AND LINK TO OTHER POLICIES

B3.1 This policy/procedure applies to Headteachers, Teaching and Support staff and is intended to be used when there are capability concerns that the appraisal process has been unable to address. The Capability Policy will apply where it is identified that an employee has insufficient skill or aptitude to carry out their duties to an acceptable standard and/or where an employee does not possess required qualifications to do the job because he/she has failed to obtain them.

B3.2 The Capability Policy does not apply in the following circumstances: -

Appraisal and Capability Policy

- Where the underperformance of an employee relates to negligence or an attitudinal problem on the part of the employee (the School's Disciplinary Policy will apply).
- Where the underperformance of an employee relates to an underlying medical issue or a disability (the Schools Attendance Management Policy will apply).
- Where the underperformance of an employee is identified during the employee's Probationary period (the Schools' Probationary Procedure will apply) (support staff only).
- Where no employment relationship exists, for example agency workers, casual/supply workers, volunteers, work experience placements.

B3.3 Newly Qualified Teachers: in the event of 'serious capability problems' during the induction period of a Newly Qualified Teacher (NQT) the Capability Procedure can be applied to the Newly Qualified Teacher and 'run alongside the induction procedure'. For further information please see the Department for Education's (DfE's) 'Statutory Guidance on Induction for Newly Qualified Teachers in England' (2008) (specifically paragraph 4.14)

B4. PROCEDURE

B4.0.1 Before instigating the formal procedure any cause for concern about the performance of an employee should have already been the subject of informal discussions as part of the normal management and appraisal process. Please see paragraphs A5.3 and A5.4 in the Appraisal Procedure. As part of these discussions the Headteacher will have reviewed with the employee expected standards of performance to ensure that these are appropriate and reasonable. They will also have drawn to the attention of the employee, the ways in which performance is deficient, provided the employee with an opportunity to make representations and have notified the employee that the appraisal system will no longer apply, that their performance will be managed under the Capability Procedure, and that they will be invited to a Formal Capability Meeting.

B4.1 FIRST FORMAL CAPABILITY MEETING

B4.1.1 The aim of the discussion at this meeting is to jointly identify with the employee the facts that have contributed to the performance problem and to decide the action required. The meeting allows the employee, accompanied by a trade union representative or work colleague if they wish, to respond to concerns about their performance and to make any relevant representations. At this meeting the employee should be reminded of the previous informal discussions held regarding their performance and told of their continued shortcomings. The employee should be given an opportunity to give their interpretation on the concerns being raised.

This meeting may provide new information or a different context to the information/evidence already collected. N.B The person conducting the meeting may adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

B4.1.2 Where, following discussion with the employee, the person conducting the meeting concludes that there are no or insufficient grounds for pursuing the

Appraisal and Capability Policy

capability issue formally through the Capability Procedure and that it would be more appropriate to continue to address the remaining concerns through the appraisal process, the employee will be notified in writing that the Capability Procedure will not be pursued and the normal appraisal process will resume.

B4.1.3 Where the conclusion is that the employee is not meeting the required standards in performance the person conducting the meeting will:

- confirm for the employee his/her performance shortcomings
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain any support that will be available to help the employee improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case and will be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place. In straightforward cases this could be **between four and ten weeks**; and
- warn the employee through issuing a First Written Warning that failure to improve within the set period could lead to a Final Written Warning and ultimately their dismissal.

Note: a Final Written Warning may be issued at this First Formal Capability Meeting in serious cases.

B4.1.4 A performance monitoring and review period will follow all Formal Capability Meetings. Formal monitoring, evaluation, guidance and support / feedback will continue during this period. ***A mid-review period meeting will be held with the employee to discuss progress and support put in place and whether there are any adjustments needed to the support arrangements (this meeting is optional but recommended)***. At the end of the review period the employee will be invited to a second Formal Capability Meeting, unless they were issued with a final written warning, in which case they will be invited to a Capability Review Meeting (see Paragraph 4.3 below).

B4.2 SECOND FORMAL CAPABILITY MEETING

B4.2.1 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the Capability Procedure will cease and the appraisal process will resume.

B4.2.2 If, by the end of the monitoring and review period, the employee has not met the standards of performance required they will be invited to attend a second Formal Capability Meeting which will be a repeat of the first Formal Capability Meeting.

B4.2.3 If, following discussion with the employee, the assessment is that the employee has made some progress and there is confidence that, given a further reasonable period, they will achieve the standards of performance required, it may be appropriate to extend the monitoring and review period, normally for up to 4

weeks and to re-convene the Formal Capability Meeting at the end of this extended period.

B4.2.4 If however the assessment is that no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a Final Written Warning and a timescale by which to improve which ***should not normally exceed 4 weeks. A mid-review period meeting will be held with the employee.***

B4.3 CAPABILITY REVIEW MEETING

B4.3.1 At the end of the monitoring and review period ***the Headteacher or relevant manager / sub-group of Governors/CEO (where it is the Headteacher that is subject to the Procedure)*** will arrange to meet with the employee again to review their progress against the standards of performance required.

- If an acceptable standard of performance has been achieved during the further monitoring and review period, and ***the Headteacher or relevant manager / sub-group of Governors/CEO (where it is the Headteacher that is subject to the Procedure)*** is satisfied that the employee will be able to maintain this improvement in performance the Capability Procedure will end and the appraisal process will resume;
- If no, or insufficient improvement has been made during the monitoring and review period, the employee will be informed that they are required to attend a Capability Hearing. The ***Headteacher or relevant manager / sub-group of Governors/CEO (where it is the Headteacher that is subject to the Procedure)*** will confirm this in writing to the employee summarising the main points from the meeting and informing the employee that a possible outcome of a Capability Hearing could be their dismissal on the grounds of capability.

B4.4 CAPABILITY HEARING (GOVERNOR PANEL)

B4.4.1 The Capability Hearing will be conducted in accordance with the Protocol for Capability Hearing (see Appendix B4) to consider the employee's dismissal.

Academies / VA / Foundation and Trust Schools

B4.4.2 On request by the School, a member of the Schools HR Advisory Service will attend the hearing to advise the Governor Panel on procedural matters.

Community / VC Schools

B4.4.3 A member of the Schools HR Advisory Service will attend the hearing to advise the Governor Panel on procedural matters.

B4.4.4 The ***Headteacher or relevant manager / sub-group of Governors/CEO (where it is the Headteacher that is subject to the Procedure)*** will prepare a written statement of case for consideration by the Governor Panel which will include:

- A copy of the relevant performance standards and personal objectives against which the employee's performance is being assessed;
- Copies of the record of any formal meetings held with the employee to discuss their under performance, including relevant appraisal records;

Appraisal and Capability Policy

- Copies of any formal warning issued in respect of the employee's under performance; and
- Evidence of any support arrangements put in place to date to assist the employee in achieving the standards of performance required.

The written statement of case will be provided to the Governor Panel and the employee at least 10 working days before the date of the Capability Hearing.

B4.4.5 The employee can decide whether to send a written response for consideration by the Governor Panel and/or attend the capability hearing in person. Any written documentation the employee wishes the Governor Panel to consider must be provided at least 5 working days before the date of the Capability Hearing, and copied to the Headteacher.

B4.4.6 The names of any witnesses to be called to the Capability Hearing by either the Headteacher or the employee must be disclosed to all relevant parties within the same timescales.

B4.4.7 The Governor Panel will review all the information submitted, both orally at the hearing and in writing, and will decide on one of the following outcomes:

- That the employee's performance has improved to an acceptable standard and can be maintained and that on this basis the Capability Procedure should end and the appraisal process resumed;
- To review the employee's performance again after a specified period of time at a re-convened Capability Hearing. This may be to allow for alternative support arrangements to be put in place; or
- To dismiss the employee on the grounds of capability.

B4.4.8 Where a decision to dismiss the employee is reached the Governor Panel will seek to find suitable alternative employment for the employee within the school where this is practicable during the employee's notice period. Where this is a position at a lower grade pay protection will not apply. In return, the employee has a responsibility to positively engage with the process of seeking to find them alternative role.

B4.4.9 The outcome of the Capability Hearing will, where possible, be relayed verbally at the end of the hearing and will be confirmed in writing to the employee as soon as possible. Where a decision to dismiss is taken the employee will be informed of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

B4.5 APPEAL

B4.5.1 If an employee considers that a decision to dismiss them, or other action taken against them (written warning or final written warning), is wrong or unjust, they may appeal, setting out the grounds of their appeal in writing to ***the Headteacher or relevant manager / sub-group of Governors/CEO (where it is the Headteacher that is subject to the Procedure)*** against the decision within 10 working days of the date of the letter confirming the decision to dismiss, setting out at the same time the grounds for appeal. Any appeal will be conducted in the manner set out within the Protocol for Capability Hearing (see Appendix B4)

For further information regarding Appeals, please see Paragraph B10 below.

B4.6. DECISION TO DISMISS

Foundation Schools, Voluntary Aided Schools and Foundation Special Schools)

The power to dismiss staff in this school has been delegated to two or more governors acting with the Headteacher. Their decision will be notified to the Governing Body.

Where the decision to dismiss has been taken, the Governing Body will dismiss the employee with relevant notice.

Once the Governing Body has decided that the employee should no longer work at the school, it will notify the Kaleidoscope Trust Board of its decision and the reasons for it. Where the employee works solely at this school, the Trust Board must dismiss them within fourteen days of the date of the notification.

CAPABILITY POLICY – SUPPLEMENTARY PARAGRAPHS

B5. ARRANGEMENTS FOR FORMAL MEETINGS AND THE CAPABILITY HEARING

B5.1 At least five working days' notice will be given of the Formal Capability Meeting and Capability Review Meeting and at least ten working days' notice will be given of the Capability Hearing. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the performance concerns. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a trade union representative or work colleague who may be a colleague, a trade union representative who has been certified by their union as being competent. The employee is not entitled to be accompanied or represented by a solicitor or other legal adviser. The employee should inform whoever is conducting the meeting (the Headteacher / Manager or the Chair of the Panel) if they are being accompanied to the hearing and the status of that representative.

B6. ATTENDANCE AT MEETINGS

B6.1 Employees will be expected to make reasonable effort to attend meetings convened under the Capability procedure. When it is not reasonable or practicable for an employee or their trade union representative or work colleague to attend a meeting for a reason which was not foreseeable when the meeting was arranged, one further meeting will be arranged. Should the employee not attend the re-arranged meeting the meeting may proceed in their absence. Employees will be offered the opportunity to be represented in their absence or make a written submission.

B6.2 If the employee is unable to attend the meeting due to long term sickness, the meeting should normally be postponed and the Managing Attendance Policy should then be followed for the duration of the Absence. Please see the 'Sickness'

B7. CURRENCY OF FORMAL WARNINGS

B7.1 Written warnings will remain on the employee's personal file for 12 months from the date of issue. The exception to this will be in the event that further action is necessary under the Capability Policy within the 12 month currency period which is related to performance and has led to a final written warning being issued. In these circumstances all relevant documentation will be retained on the employee's personal file until such time that the employee has no active capability warnings on record for a period of 12 months.

B7.2 N.B Should the employee be absent from work long term (4 weeks or more) during the currency of the warning, the currency of the warning will be extended for a period that equates to the period of absence. This would apply for example in cases of long term sickness and maternity / paternity / adoption leave.

B8. SERIOUS CASES OF UNDERPERFORMANCE

B8.1 In very serious cases, a final written warning may be issued without a first written warning having previously being issued. Where a final written warning is issued the employee should be warned that failure to improve their performance could lead to further action under the Capability Procedure, including their dismissal. A Final Written Warning will start a monitoring and review period not normally exceeding 4 weeks.

B9.0 RECORDS OF FORMAL MEETINGS

B9.1 Notes will be taken of all formal meetings and a copy sent to the employee as soon as possible following the meeting. Where a written warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the written warning (see Para 4.5).

B10. APPEALS

B10.1 Appeals against written warnings following the formal capability meetings will be heard by an individual manager or an individual governor. Appeals against the outcome of the Capability Hearing will be heard by a separate panel of Governors.

B10.2 An appeal must not interrupt the progress of the procedure, although the appeal decision could lead to the matter being reconsidered and a lower level warning being issued or the Capability process being concluded. Where an appeal is upheld the matter should be referred back to the Headteacher/manager for further appropriate action with recommendations where appropriate.

B10.3 Appeal Hearings are restricted to considering the reasonableness of the decision made at the former Hearing. It can consider any relevant new evidence, or representations about any perceived procedural irregularities.

B10.4 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a trade union representative or work colleague will apply as with

Appraisal and Capability Policy

formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee as soon as possible.

B10.5 Appeals will be dealt with impartially

B10.6 The employee will normally be informed verbally at the hearing of the outcome. They will be informed of the outcome in writing as soon as possible.

B10.7 For further details of the possible outcomes from Appeals, please see the relevant model letters in the Toolkit of Model Capability Letters

B11. REQUESTING A CHANGE IN ROLE

B11.1 If the employee would like consideration to be given to them voluntarily changing their role, for example stepping down from some of their higher level responsibilities or moving to a different vacant post within the school then they can request this at any point during the procedure.

B11.2 The Headteacher/manager will need to give consideration to whether they can reasonably accommodate this request within the needs of the school. They are under no obligation to agree any requests. Where the request is to be redeployed to a different post, this should only be considered if they believe the individual is able to demonstrate that they meet the essential criteria of the new role.

B11.3 Pay protection does not apply under these arrangements and any current warnings will transfer with the individual to the new post.

B12. MONITORING AND REVIEW PERIODS

B12.1 The monitoring and review period can be varied by mutual agreement.

B12.2 If during the review period the circumstances of an individual case suggest a more serious performance issue than was initially assessed or the performance of an employee deteriorates significantly, a decision may be taken to progress to the next stage within the procedure before the end of the monitoring and review period.

B13. RECORDS

B13.1 Records will be kept detailing:

- The nature of any poor performance
- The employee's defence or mitigation
- The action taken and the reasons for it,
- Records of meetings and hearings and their outcomes
- Whether an appeal was lodged, its outcome and any subsequent developments.

B13.2 These records will be kept confidential and retained in accordance the Data Protection Act, and Freedom of Information Act, which require the release of certain data to individuals on their request. Once the currency of a written warning has expired these records will be removed from the employee's personal file and will be confidentially destroyed.

Appraisal and Capability Policy

B13.3 Capability sanctions will remain active on an employee's personal file for the period outlined in the written confirmation of the sanction.

Signed:

Chair of Trust Board

Dated:

October 2018

APPENDIX B1 - GENERAL PRINCIPLES UNDERLYING THE CAPABILITY POLICY

Support

The emphasis within the Appraisal and Capability Procedures is on supporting an employee to achieve the standards of performance required from them. The School will seek to establish appropriate support arrangements through discussion with an employee and such arrangements may include developing more specific guidance in the area(s) within which the employee is under performing, in service training, observation by the employee of recognized good practice, within the same school or at another school, a temporary change in role and responsibilities, support, counseling, "in-class" or on the job support.

Training courses or assistance from colleagues should be arranged as soon as possible but should not interrupt the timing of the procedure.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and governing body to quality-assure the operation and effectiveness of the appraisal system. The school may achieve this, for example, by the Headteacher or appropriate colleague reviewing all employees' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Headteacher and the Finance Committee of the Governing Body might also wish to be aware of any pay recommendations that have been made.

Standards of performance

The relevant standards of performance and personal objectives against which an employee is to be assessed will be agreed with an employee through the appraisal process on an annual basis.

Delegation

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

Grievances

Any disagreements or grievances about the interpretation of this procedure or the application of any related matters not covered in this procedure, must not delay the various elements of the capability procedure or the overall timetable determined to be appropriate for handling any particular case. The appeals process exists to raise any concerns about procedure or the level of sanction imposed.

In exceptional circumstances a member of staff may raise a grievance about the behaviour of a Headteacher or other Manager during the course of this procedure. Depending on the circumstances, it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the member of staff has been mistreated and consideration should be given to enabling another manager to deal with the capability case. Any records should be passed to the new manager and if appropriate, the case should be continued within the same timetable.

Appraisal and Capability Policy

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's Attendance Management Policy. This may involve an immediate referral of the employee to the Occupational Health Service to assess the employee's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures during the employee's absence from the workplace. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Short term absence will not normally delay the progress of the Capability Procedure (see Paragraph 7.2).

Monitoring and Evaluation

The governing body and Headteacher will monitor the operation and effectiveness of the School's appraisal arrangements.

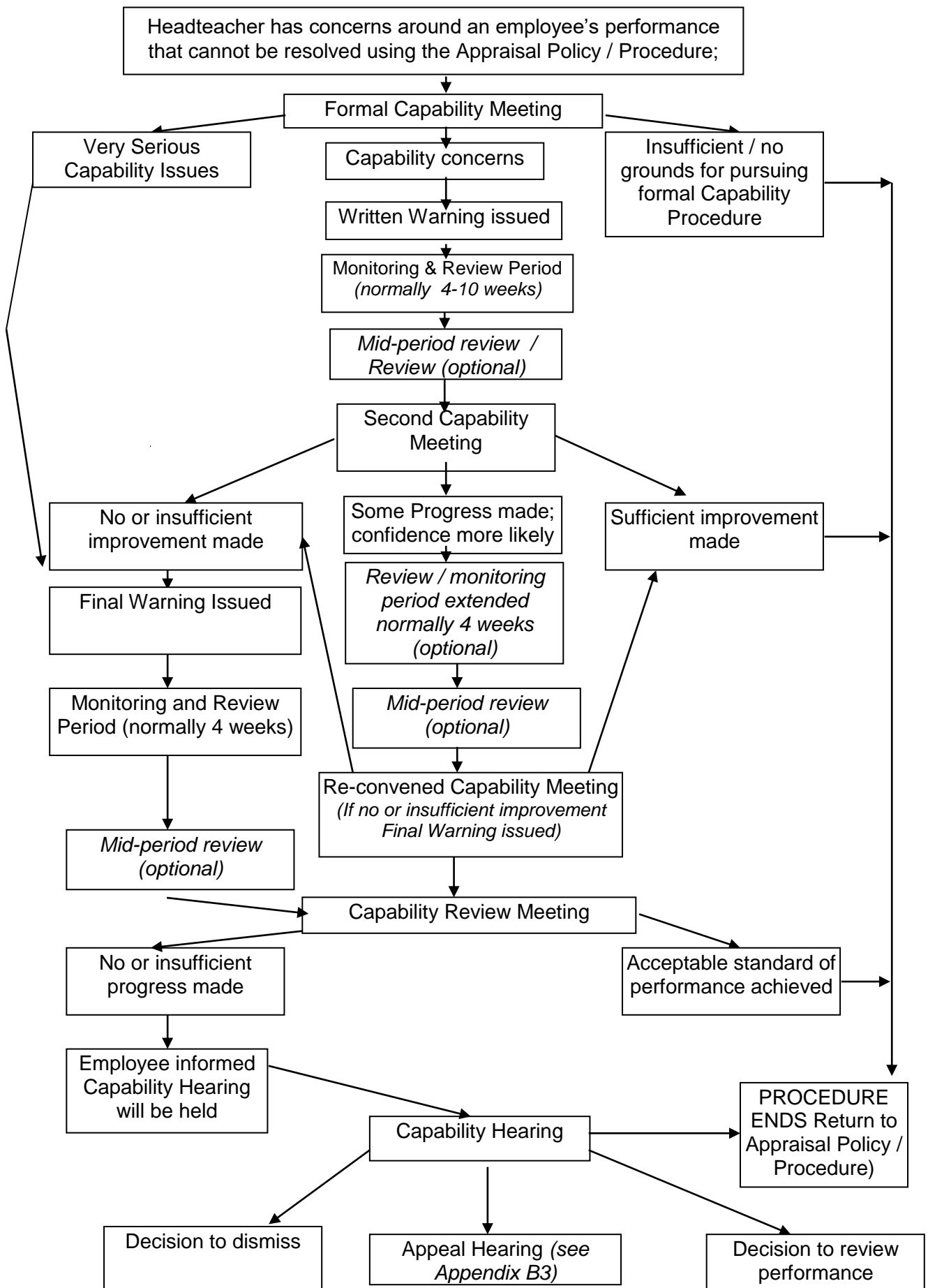
Retention

The governing body and Headteacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

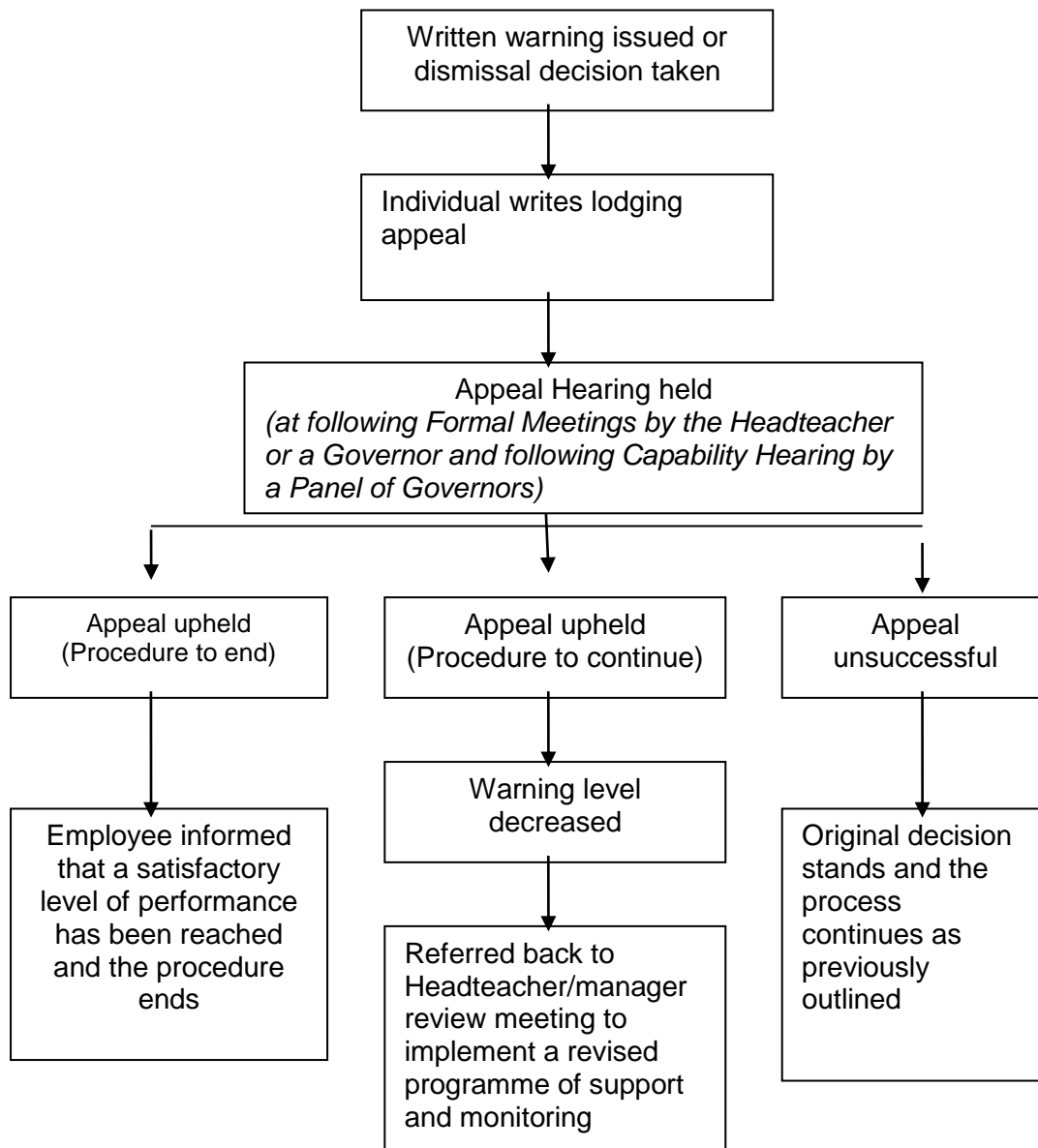
Equal Opportunities / Consistency and Fairness

In implementing the Capability Policy Kaleidoscope Multi Academy Trust school's will ensure all relevant equality legislation is adhered to, that there is consistency of treatment and fairness and that the needs of employees are given careful consideration. '

APPENDIX B2 - CAPABILITY PROCEDURE FLOW DIAGRAM



Appraisal and Capability Policy
APPENDIX B3 – APPEALS FLOW DIAGRAM



PLEASE NOTE: An appeal does not interrupt the process or timings of the procedure, unless the appeal decision leads to the matter being reconsidered.

Appraisal and Capability Policy
APPENDIX B4 - PROTOCOL FOR CAPABILITY HEARING

Introduction

The Chairperson will:

- Introduce those people present
- Explain briefly the reasons the hearing has been convened (i.e. the perceived on-going unsatisfactory performance of the employee)
- Explain the way in which the hearing will be conducted

Presentation of Management's Evidence

The Headteacher / relevant Manager will present the management case including relevant evidence in support of it. Any witnesses called by the Headteacher / relevant Manager will be:

- Questioned by the Headteacher / relevant Manager
- Questioned by the employee and his/her representative
- Questioned by the Capability Panel
- Questioned by the Headteacher / relevant Manager to clarify any particular points but not to introduce new evidence.

At the conclusion of the Headteacher / relevant Manager's submission he/she may be questioned by the employee and his/her representative and by the Capability Panel.

Employee's Response

The employee and or representative may respond to the management case and may introduce evidence in their defence. Any witnesses called by the employee and/or representative will be:

- Questioned by the employee and his/her representative
- Questioned by the Headteacher / relevant Manager
- Questioned by the Capability Panel
- Questioned by the employee and/or representative to clarify any particular points but not to introduce new evidence.

At the conclusion of the employee's/representative's submission he/she may be questioned by the Headteacher / relevant Manager and by the Capability Panel.

Summing-Up

The Headteacher / relevant Manager will be asked to sum up his/her case but not to introduce new evidence.

The employee and/or representative will be asked to sum up his/her response but not to introduce new evidence.

Decision

The Capability Panel will adjourn in order to consider the case before giving a decision. The Panel must consider all the facts and decide what action to take, bearing in mind all the relevant factors which will include the following:

- the seriousness of the concerns / shortfall regarding performance
- whether the employee is subject to any current capability warnings/sanctions
- the employee's general record.
- the School's Capability Policy in relation to the likely outcome given the circumstances of the case
- the consequences to the school of the shortfall in performance
- the outcome in similar cases in the past

Conclusion of Capability Hearing

When a decision has been reached, the Chairperson will draw up a statement setting out the Panel's finding and decision. The Capability Hearing will be reconvened and the employee and Headteacher/relevant manager informed of the Panel's decision. Details of the appeals procedure will also be outlined.

The outcome of the Hearing will be confirmed in a letter to the employee within 5 working days of the Capability Hearing. The letter will state clearly:-

- *The panel's conclusions in relation to the evidence presented.*
- *The nature and seriousness of any shortfall in performance.*
- The decision of the Panel [and where relevant any time limits involved].
- * The standard of performance expected in future and the likely consequences for the employee if this is not met. [*** Include only if relevant**]
- * Any support to be provided by the school to assist the employee. [*** Include only if relevant**]
- * The way in which the employee may exercise his/her right of appeal against any capability sanctions that has been issued. [*** Include only if relevant**]

Guidance Notes

Confidentiality

Hearings should not be conducted in public. Care must be taken over any announcement of the conclusion: any statement that is strictly necessary (including to the full Governing Body) should be confined to the outcome only, all participants in the hearing should exercise great caution over discussing the case in order to avoid prejudice.

Persons sitting on a Panel should have no personal connection with the employee, the presenter of the management case or witnesses since this might prejudice a fair hearing.

Role of the Local Authority Representative

In maintained schools where the Local Authority is the employer (that is Community and Voluntary Controlled (VC) schools), a representative of the Local Authority has the right to attend all proceedings where dismissal might be an outcome. In the case of schools where the Local Authority is not the employer (Voluntary Aided (VA), Foundation and Trust schools and Academies) a representative of the Local Authority can attend by invitation of the Governors.

The role of the Local Authority Representative (who will be someone from Schools Human Resources) is to give advice on procedure to the Panel.

Requests for Adjournment

The Panel may be asked by either side for an adjournment. They will need to assess the reasons for such a request and decide accordingly. Any reasonable request of this nature should not be refused.

Witnesses

In hearings, witnesses must withdraw as soon as questions to them are concluded. It may be necessary to recall them, otherwise they may be released.

APPENDIX B5 - NOTE ON THE PROTOCOL FOR THE APPEAL HEARING

In the case of appeals the employee's side will normally make the initial presentation and this will set out the grounds for appeal.

The response will then be made by the Headteacher/Manager

An appeal is not a re-run of the first hearing but is an opportunity for the employee to set out reasons why, in their view, the initial decision was inappropriate.

It will, of course, be necessary for the Governors' appeal panel to have access to all documentation from the first hearing and in some circumstances it may be appropriate for a representative of the first Governors panel to make an introductory presentation in order to summarise previous events and decisions taken.