



THE MINSTER NURSERY AND INFANT SCHOOL

SCHOOL OF INSPIRATION

DETERMINATION HONOUR BELIEVE

PREPARING FOR A BRIGHT FUTURE WITH INNOVATIVE AND EXCITING LEARNING

Capability Policy

Reviewed on: 5th December 2018

Signed.....Chair

To be reviewed Autumn 2021



WE ARE A VOLUNTARY AIDED (VA) SCHOOL WITHIN THE DIOCESE OF SOUTHWARK

HEAD TEACHER: MRS STEPHANIE EDMONDS *B Ed HONS*



THE MINSTER NURSERY & INFANT SCHOOL

Capability Policy



A: Impact Assessment summary for policy coversheets

Impact Assessment: Equality, Safeguarding, Health and Safety, Sustainability	
Overview: to be completed with a full impact assessment if required.	
Title of Activity/Policy:	New or Revision or Expected Implementation
Author and Date:	Date: Review Date:
Equality and Diversity: Which of the characteristics may be impacted upon? If there is an impact, how has this been considered and mitigated against? What are the risks of proceeding? What are the benefits?	
Safeguarding: Are there any aspects of this proposal which could cause a student/member of staff/visitor to feel unsafe? If yes, how has this been considered and mitigated against? What are the risks of proceeding? What are the benefits?	Yes <input type="checkbox"/> or No <input type="checkbox"/>
Health and Safety Have any risks been identified? If yes, how has this been considered and mitigated against? What are the risks of proceeding? What are the benefits?	Yes <input type="checkbox"/> or No <input type="checkbox"/>
Sustainability: Are there expected benefits or impacts on sustainability issues? If yes, how have these been considered and mitigated against?	Yes <input type="checkbox"/> or No <input type="checkbox"/>
Evidence: What evidence do you have for your conclusions? What consultation has taken place? How will you monitor the issues raised?	
Risk: Should this activity/policy result in an entry on the risk register (high/medium) or does it represent a low risk?	High <input type="checkbox"/> Medium <input type="checkbox"/> Low <input type="checkbox"/>

Fruits of the Spirit

The Fruits of the Spirit underpin all that we do and we weave these Christian values into the fabric of our school ensuring that they underpin every thought, decision and action made.

This policy has been compiled mindful of these spiritual fruits to make sure they develop and sustain all aspects of school life at The Minster Nursery and Infant School.

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1. Scope

- 1.1 The procedure applies to support staff appointed by the school and also at Pupil Referral Units. This procedure will apply in full to employees on satisfactory completion of their probationary period.
- 1.2 This procedure has been separated out from advice on disciplinary procedures to emphasise the developmental aspects. In some cases, however, it may be difficult to distinguish between a performance problem caused by lack of capability, negligence or misconduct. If in doubt, please seek advice from your HR provider.
- 1.3 For the purpose of this procedure, lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard.
- 1.4 This procedure does not cover the normal day-to-day supervision where a headteacher/manager may have to counsel, train, appraise or otherwise discuss with an employee instances of poor performance. It is intended to cover those cases where an employee's work performance is below the required standard through lack of capability.
- 1.5 If an employee commences sick leave whilst subject to the capability procedure the capability procedure will continue unless medical advice reveals an underlying medical condition in which case the situation will be considered in the light of the facts and circumstances of the particular case.

2. Introduction

- 2.1 Managing poor work performance is one of the most difficult tasks a manager or supervisor has to tackle, yet it is vital to the success of any school: efficiency and service delivery may be affected and safety could be placed at risk by an employee's incompetence or negligence. In addition, relations with the school's clients and members of the community may be affected, or even damaged, where standards are not being met.

- 2.2 Headteachers and managers have a responsibility to manage work performance and any problems that arise. These guidelines are designed to give a framework for tackling poor performance with good management practice and by following a defined procedure. The relevant employment legislation and case law have been taken into account in the development of this procedure.
- 2.3 Addressing poor performance of workers is necessary for the efficient operation of the business and the delivery of high quality, value for money services. The procedure:
- allows headteachers/managers to address issues of unsatisfactory performance and seek improvements.
 - ensures that employees covered by the procedure are treated fairly and consistently
 - encourages all employees to achieve and maintain high standards of job performance.
 - supports the delivery of high quality services.
 - helps to safeguard the integrity and good reputation of the School and the Council.
- 2.4 If an employee has any difficulty at any stage of the procedure because of a disability, or wishes to inform management of any medical condition they consider relevant, they should discuss the situation with their headteacher/manager as soon as possible.

3. Link With Performance Development and Competency Scheme (PDCS)

- 3.1 The PDCS is Croydon Council's performance management scheme and applies to all permanent and fixed term staff except teachers. Schools can either adopt the Council's PDCS for their support staff or adopt an alternative objective and competency based appraisal scheme with performance ratings. Thereafter referred to as school's appraisal scheme.
- 3.2 Employee performance should be managed routinely through the PDCS process, or the school's adopted appraisal scheme, by objective setting, regular one-to-one meetings, a mid-year review and an annual performance discussion. Initial concerns about performance should be addressed as soon as possible as part of this process, with appropriate support being provided and reasonable timescales given for improvement.
- 3.3 If performance does not improve to a satisfactory level, the annual performance assessment due under the PDCS, will be brought forward and completed by the employee's manager. The employee will be rated against each objective and competency. Evidence of not meeting performance targets will need to be provided and the measures taken to support the employee in improving their performance will need to be demonstrated. The Capability Procedure may be invoked where the employee's overall rating is "unsatisfactory" or where there is other performance concerns not related to the PDCS objectives and competencies.
- 3.4 When concerns arise in relation to capability that are not related to performance objectives or competencies the procedure may be followed, with new objectives added to the employee's performance objectives in

relation to the areas causing concern.

- 3.5 Where the Capability Procedure is invoked, the normal performance cycle under PDCS will be suspended.
- 3.6 Where the school has adopted an alternative appraisal scheme the school will need to ensure that it has a mechanism for dealing with informal performance concerns.

4. Link With Other Procedures

- 4.1 Unsatisfactory performance due to sickness or health issues will be addressed under the Sickness procedure. Where poor performance is due to misconduct, the Disciplinary Procedure will apply.
- 4.2 Grievances raised during the capability process will normally be dealt with as part of this procedure. If the employee raises the complaint only after the capability proceedings have finished and it is on substantial new grounds then it will be necessary for the employee grievance procedure to be completed in full.

5. Accredited Trade Union Officials

- 5.1 Normal performance standards apply to officials' conduct as employees but action under this procedure should not be taken without inviting the involvement of the appropriate professional Trade Union Official, Corporate Staff Side Lead, or that official's nominated representative.

6. Representation

- 6.1 Employees have the right to be accompanied by a certified Trade Union official or a work colleague at all formal meetings of this procedure. Employees are responsible for arranging their own representation. It is suggested that employees who are members of a recognised trade union contact their union representative if subject to action under this procedure.
- 6.2 Employees may not be represented by a person who may prejudice the fairness of the disciplinary process or who may have a conflict of interests.
- 6.3 Employee representatives can address formal meetings and assist employees in presenting their case. However questions directed at employees should be answered by the employee concerned.

7. Timescales and Definition of a Working day

- 7.1 For the purposes of the operation of this Support Staff Capability Procedure, timescales are expressed in working days. For term time only support staff a working day should be reckoned as a day that the school is open for pupils. Where capability issues arise just before a school holiday, arrangements to resolve the matter speedily should be discussed between the parties. An intervening school holiday should not of itself be a cause for an undue delay in resolving the matter. For all year round staff a working day is defined as Monday to Friday calendar days. The following timescales (in working days) should be adhered to:-

- Written notice of first formal review meeting – 7 working days
- Written notice of final formal meeting – 7 * working days
(*NB this may require longer if the case is complex and involves a substantial volume of paperwork)
- Written notice of outcome of formal meetings and reviews – 10 working days
- Written notice of employee’s intention to appeal – 10 working days following receipt of the decision
- Written notice of appeal hearing – 7 working days
- Written notice of outcome of appeal hearing – 10 working days

NB Warnings about work performance should be given individually. A general warning given to all employees is of limited weight and limited duration. Warning the employee that their job is at risk is a necessary part of this process. The employee must be left in no doubt that unless their work performance improves to the required standard they could be dismissed. The warning is issued by the headteacher/manager but it is **not** a disciplinary sanction and **cannot** be taken into account in any disciplinary matter.

Advice should be sought from the school’s HR provider on this and all other aspects of dealing with an employee's poor performance .

8. Formal Reviews

8.1 General

8.1.1 At least 7 working days before a formal meeting, the employee will be given, in writing:

- the time date and venue for the meeting.
- the reason for the meeting, including an outline of the concerns and a summary of any action taken to date.
- copies of any documentation to be relied on at the meeting.
- notification of his/her right to be represented.
- the opportunity to submit any relevant documents that the employee intends to rely on. (This must be provided 3 working days prior to the formal meeting).

8.1.2 Management will seek a mutually agreeable date and time for formal meetings with the employee’s representative where this is known. Where an employee’s representative cannot attend at the time proposed for the hearing management will be obliged to postpone the hearing to an alternative time and

date suggested by the employee provided that: (a) the alternative time is reasonable and (b) it falls within the five working days following the day originally proposed in the notice of the hearing. If the employee fails to attend a formal meeting the manager may proceed in the employee's absence.

8.1.3 Meetings under the formal stages of this procedure will usually be triggered through the PDCS process or the school's adopted appraisal scheme, and associated one-to-one meetings or where there are other performance concerns not related to these process. In exceptional circumstances, a formal meeting may also be triggered where a serious performance issue arises suddenly e.g. through a disciplinary or complaint investigation.

8.2 First Formal Review

8.2.1 A first formal meeting will be held where an employee's performance has been rated unsatisfactory as mentioned in paragraph 3.3 or 3.4.

8.2.2 At the meeting, the headteacher/manager will:

- set out the standards of performance expected of the employee and explain how the employee's performance has fallen short and the impact that this is having on service delivery.
- confirm what action has been taken to date to seek an improvement in performance.
- invite the employee to explain their side of the situation.

8.2.3 Where a performance concern is confirmed the headteacher/manager will set a review period and an action plan in discussion, and if possible in agreement, with the employee which details:

- suitable targets and timescales for an improvement in the employee's performance. Timescales should not normally exceed 3 months or be shorter than 4 weeks;
- any appropriate measures to assist and support the employee in making the necessary improvement; and
- inform the employee that a meeting under the Final Formal Review will be arranged if, during or at the end of the review period, the required improvement has not been made.
- any other action to be taken.

8.2.4 After the meeting the headteacher/manager will confirm the outcome in writing. Where a performance concern is confirmed, the letter will include a written caution of the possible consequences if performance does not improve to the required level.

8.2.5 The headteacher/manager will meet with the employee during the review period to monitor progress, advise the employee accordingly and decide whether or not any further support or assistance should be applied.

8.2.6 If, at the end of the review period, there has been a satisfactory improvement in the employee's performance the employee will be advised of this in writing and reminded of the need to sustain the improvement.

8.3 Final Formal Review

8.3.1 A final stage meeting will be arranged where:

- performance has not improved to the headteacher/manager's satisfaction following the first formal review, or
- an employee's performance, having improved satisfactorily after the first formal review, later becomes unsatisfactory within the same performance cycle.

8.3.2 Meetings at the Final Formal Review will be before a committee of the governing body. A representative from the school's HR provider should be invited to be present at meetings under the final review to give advice where questions of unsatisfactory performance are to be discussed. The Local Authority should also be offered the opportunity to attend Final Formal Review meetings where the possible outcome is dismissal.

8.3.3 To ensure fairness throughout the procedure, different governors/managers must participate at the formal panel and appeal panel meetings.

8.3.4 The committee of the governing body will:

- a) Invite the presenting manager (normally the headteacher/manager who undertook the review at the First Stage) to:
 - set out the standards of performance expected of the employee;
 - explain how the employee's performance has fallen short and the impact that this is having on service delivery;
 - explain what action has taken place to allow the employee the chance to improve their performance; and
 - give an assessment of the employee's performance following the review.
- b) consider any representations made by or on behalf of the employee and any statement of intent they may wish to make about their future performance.

8.3.5 Where the committee of the governing body consider that the employee's performance is unacceptable, that sufficient opportunity to improve has been given, that there is no reasonable likelihood of the required standard of performance being met within a reasonable time, and that adequate warning has been given of the possible consequences, the governing body may either redeploy the employee into another suitable job at the same or lower grade or give the employee notice of dismissal. Where the job is of a lower grade, this will be without a salary protection.

8.3.6 Where the committee of the governing body feel that the employee should be given a further opportunity to improve their performance, a final review period may be set. This will be accompanied by a final caution that employment is at risk unless a satisfactory improvement is made. The final review period should not normally last longer than 3 months or be shorter than 4 weeks. If the required improvement is not met, the governing body will reconvene a committee to consider dismissing the employee on the grounds of capability.

8.3.7 Community schools will need to notify the Local Authority of the decision of the governing body after:-

- the period for lodging an appeal has expired; or
- the appeal has been heard by the appeals panel of the governing body and the appeal has not been upheld.

Where applicable the employee will remain suspended on full pay pending the outcome of an appeal and/or throughout the period of notice.

8.3.8 In the event of an Employment Tribunal hearing, where the employee is employed in a school, the governing body (regardless of whether it is the employer or not) will be the respondent and will therefore be required to show that the stages of the Capability procedure have been carried out in a fair and reasonable manner. Head teachers/managers who initiate action under the procedure must consider all the implications of any action.

9. Appeals

9.1 Employees may appeal against a decision to:

- set targets or timescales for improvement;
- give a formal caution;
- terminate employment.

9.2 Appeals may only proceed on the following grounds:

- a) the proper procedure was not followed in which case the appeal panel will consider whether this materially affected the decision.
- b) the decision reached and/or the sanction given was unreasonable considering the information provided.
- c) new evidence, which was not reasonably available at the time, has become available.

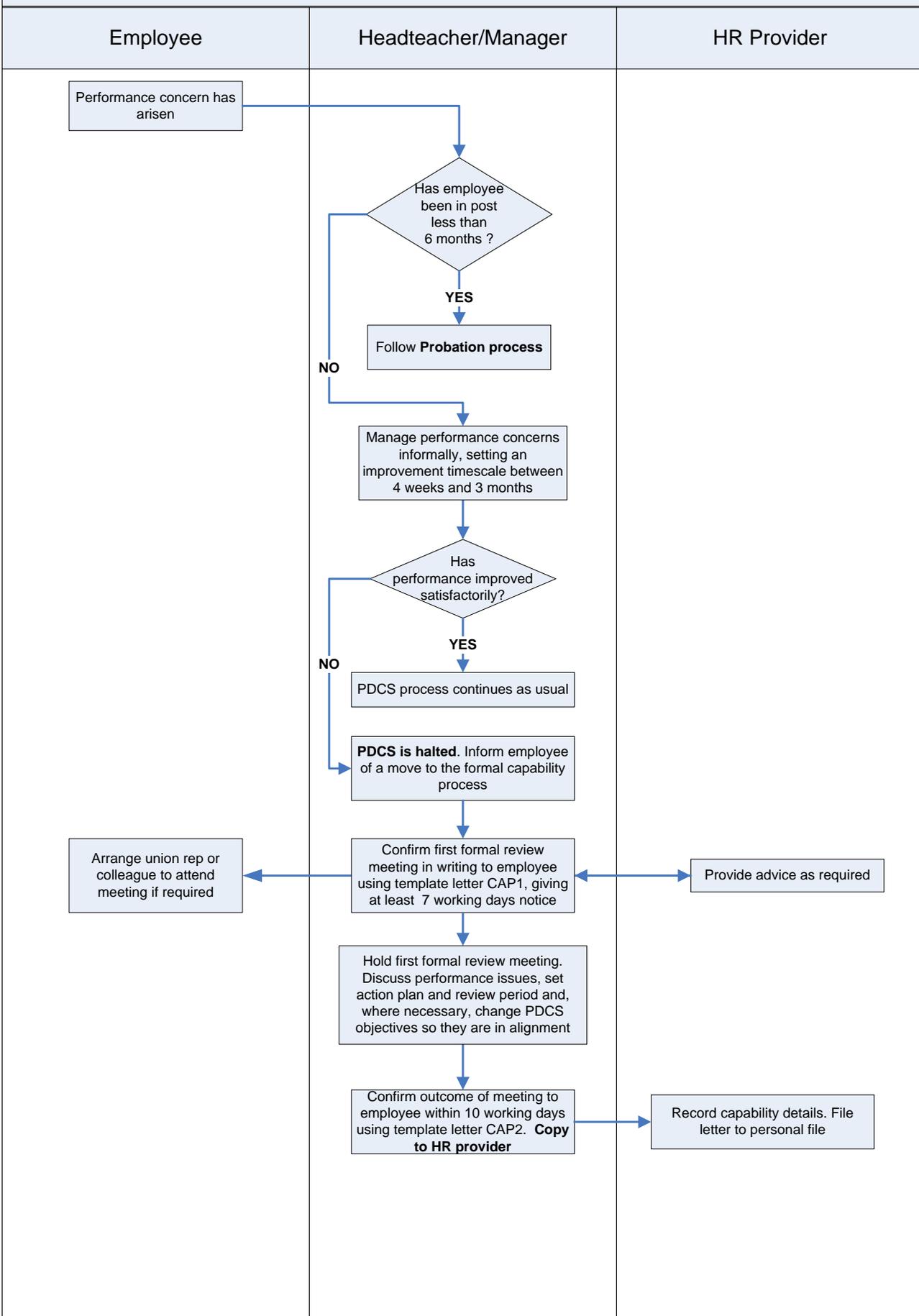
9.3 Appeals must be submitted in writing within 10 working days, from the date of receiving written confirmation of the outcome and must specify the grounds of appeal.

9.4 Appeals against dismissal or action short of dismissal will be heard by an appeal committee of the governing body, who has had no previous involvement in the case, and the school's HR provider. The appeal decision is final. The Local Authority should be offered the opportunity to attend appeals against dismissal.

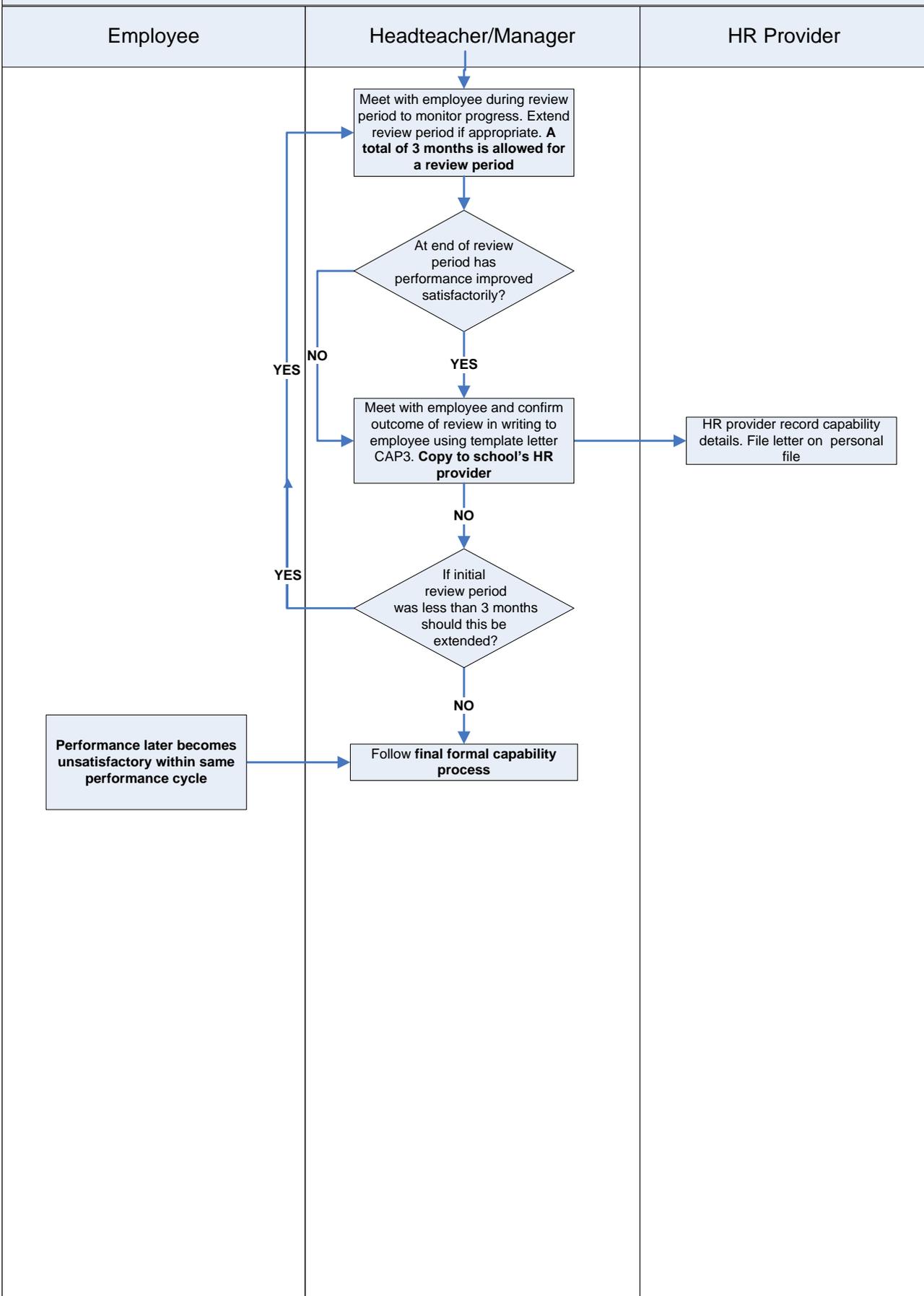
- 9.5 Decisions made at the Final Stage are not stayed pending the outcome of an appeal. Employees who are dismissed will be removed from the payroll and reinstated, with no loss of continuity of pay, if their dismissal is over-turned on appeal.

See flowchart below.

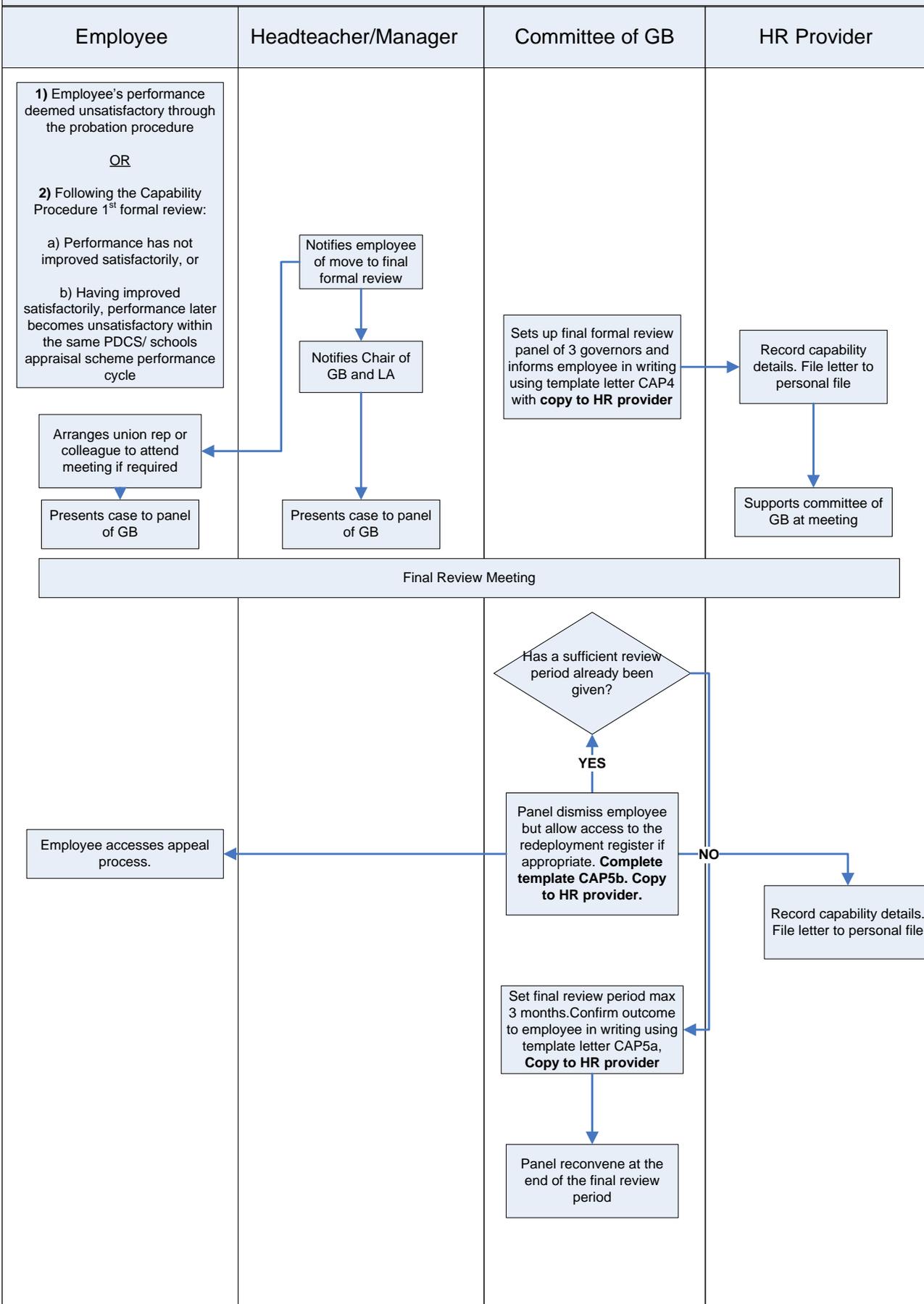
Capability process – 1st formal



Capability process – 1st formal continued



Capability process – Final formal



Capability process – Final formal continued

