

Saints Peter and Paul Catholic Primary School



Capability Procedure for Teaching Staff

CAPABILITY PROCEDURE FOR TEACHING STAFF

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(*insert school/Centre for Learning (CfL) name here)

CAPABILITY PROCEDURE FOR TEACHING STAFF

Procedure Approved: The Governing Body of <i>(*Insert name of school/ CfL)*</i> adopted this policy on <i>(*insert date and status of Governing Body approval meeting here)*</i>
Implementation Date: <i>*Insert Implementation date</i>

INTRODUCTION

This procedure applies to all teaching staff within the School/CfL about whose performance there are serious concerns that the appraisal process has been unable to address. The application of the capability procedure will commence immediately following the teacher being informed of these concerns.

It has been introduced following consultation with the relevant local professional associations of NAHT, ASCL, ATL, NASUWT and NUT via the Local Authority acting on behalf of the School/CfL Governing Body and any commentary received from these associations has been considered in the development of this procedure.

This procedure **will not** be used in the following situations:

- Where a teacher fails to reach satisfactory standards as a result of his/her carelessness, negligence, or wilful action which results in an allegation of misconduct or where there is concern as to the conduct and behaviour of an employee – this will be addressed through the School/Centre for Learning disciplinary procedure.
- Where there is concern over an employee's attendance that is related to sickness absence - this will be addressed through the Schools/Centre for Learning Sickness Absence Management procedure. Where an employee being managed under capability procedures falls ill, resulting in absence from work, continuation or suspension of capability proceedings will be determined by the nature and length of sickness absence.

Employees are entitled to be accompanied by the Trade Union/Professional Association representative or a work colleague during any formal meetings, hearings or appeals relating to this procedure. Employees will be expected to make their own arrangements for representation under any stage of the procedure. Where representation cannot be provided to a first proposed meeting then, to assist an employee in securing representation, an alternative date will be offered on one further occasion, usually within five working days of the originally proposed meeting, or as soon as practicable thereafter.

No formal action under this procedure will be taken against a teacher who is a local Trade Union/Professional Association representative until the circumstances of the case are discussed, subject to obtaining the employee's agreement, with a Trade Union/ Professional Association representative at regional level. This is predicated on the understanding that such employee would wish to be represented by their regional association.

SECTION 1.0 THE PROCEDURE - OVERVIEW

- 1.1.** In most cases the head teacher will be responsible for invoking this procedure. However, the head teacher may nominate an appropriate senior member of staff to invoke the procedure where the circumstances are considered appropriate. Therefore any reference to head teacher in this procedure may also refer to a nominated senior officer.
- 1.2.** In the case of the head teacher's performance failing to meet acceptable levels, the Chair of the Governing Body should invoke the procedure or in his/her absence or at his/her discretion, the Vice Chair or other designated governor.
- 1.3.** In a case involving the head teacher all references in this procedure to 'the head teacher' will be replaced by reference to 'the Chair of the Governing Body or other designated governor' in accordance with paragraph 1.2.
- 1.4.** The Governing Body shall appoint a Committee, referred to as the First Committee, consisting of not less than three governors, with delegated powers to deal with capability matters at the Incapability Hearing stage of this procedure and an Appeals Committee to deal with matters that reach the appeals stage of this procedure. The Appeals Committee must contain the same number of governors as the First Committee. No governor who served on the First Committee can serve on the Appeals Committee. The head teacher should not be a member of either Committee

SECTION 2.0 THE PROCEDURE – FORMAL MEETINGS

- 2.1.** Teacher appraisal processes provide for assessment of the overall performance of teachers and head teachers within the context of professional expectations under Teachers Standards, the school's improvement plan and an individual's own professional development needs. Where an individual's performance fails to meet the standards or objectives set under the appraisal policy, the head teacher will progress management of the identified issues via a formal capability meeting process. This process will consist of 4 distinct stages with the first three stages each lasting 6 weeks. Stage 4 will consider the performance of the teacher during the review periods set at paragraphs c), f), h).

Every stage may not apply in the management of individual cases of capability.

2.2. STAGE ONE CAPABILITY MEETING (REFER TO APPENDIX A, PAGE 11)

STAGE ONE CAPABILITY MEETING – APPLICABLE TO ALL TEACHERS BEING MANAGED IN ACCORDANCE WITH THIS PROCEDURE

2.2.1. A **stage one capability meeting** to discuss the area(s) of concern will be convened and the teacher will be given at least 5 working days notice in writing of this meeting which will include advice on their right to representation. The notification will include sufficient information about the concerns in relation to performance, including any relevant paperwork, to enable the teacher to prepare for the meeting.

2.2.2. At the meeting the head teacher will:

- identify the professional shortcomings, for example which of the standards expected of teachers is not being met;
- give the opportunity for the teacher to make a response to the head teacher's observations.

2.2.3. At the conclusion of the meeting the head teacher may conclude that;

- a) there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end, or;
- b) there are sufficient grounds to warrant some concerns and these should be addressed further under the capability procedure, or;
- c) the concerns are so serious as to be addressed under the capability procedure such that a final written warning is issued to the employee with notification that a failure to improve could lead to dismissal.

Where an outcome under b) or c) applies the head teacher will:

- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific areas of concern 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 teacher improve their performance;
- set out how performance will be monitored and reviewed.

2.2.4. The head teacher will document all discussions as may be necessary for their own records and to inform the processes at section 3 (Incapability Hearings) of this procedure should a case progress to that stage.

2.2.5. For those teachers identified under 2.2.3. b) or c) above, a further performance monitoring and review period will follow the first formal capability meeting and the following arrangements under Stage 2 shall apply to those at 2.2.3. b) and the arrangements under Stage 4 will apply to those at 2.2.3. c).

2.3. STAGE TWO CAPABILITY MEETING (REFER TO APPENDIX B, PAGE 12)

FOR THOSE TEACHERS IDENTIFIED UNDER b) AT PARAGRAPH 2.2.3.

2.3.1. Formal monitoring, evaluation, guidance and support will apply during the review period. On conclusion of the review period the teacher will be invited to a **stage two capability meeting**. This meeting will consider the performance of the teacher during the first review period and will provide for one of three outcomes as below:

- d)** the head teacher is satisfied that the teacher has made sufficient improvement and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end, or;
- e)** some progress has been made but further improvement is required and should continue to be addressed further under the Capability Procedure, or;
- f)** no, or insufficient improvement has been made during the monitoring and review period and the concerns are so serious as to continue to be addressed under the Capability Procedure such that a final written warning be issued to the employee with notification that a failure to improve could lead to dismissal.

Where an outcome under e) or f) applies the head teacher will:

- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific areas of concern 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 teacher improve their performance;
- set out how performance will be monitored and reviewed.

2.3.1.1. The head teacher will document all discussions as may be necessary for their own records and to inform the processes at Section 3 (Incapability Hearings) of this procedure should a case progress to that stage.

2.3.2. For those teachers identified under 2.3.1 (e) or (f) above, a performance monitoring and review period (6 weeks) will follow the second formal capability meeting and the following arrangements under Stage 3 shall apply to those at 2.3.1 (e) and the arrangements under Stage 4 will apply to those at 2.3.1 (f).

2.3.3. STAGE THREE CAPABILITY MEETING (REFER TO APPENDIX C, PAGE 13)

FOR THOSE TEACHERS IDENTIFIED UNDER (e) AT PARAGRAPH 2.3.1.

2.3.3.1. Formal monitoring, evaluation, guidance and support will apply during the review period. On conclusion of the review period the teacher will be invited to a **stage three capability meeting**. This meeting will consider the performance of the teacher during the second review period and will provide for one of two outcomes as below:

- g)** the head teacher is satisfied that the teacher has made sufficient improvement and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end, or;
- h)** no, or insufficient improvement has been made during the monitoring and review period and the concerns are so serious as to continue to be addressed further under the Capability Procedure such that a final written warning be issued to the employee with notification that a failure to improve could lead to dismissal

Where an outcome under h) applies the head teacher will:

- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific areas of concern 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 teacher improve their performance;

- set out how performance will be monitored and reviewed.

(because of the seriousness of the circumstances where a teacher has reached this stage, the standard of 'some progress' will not apply)

2.3.4. The head teacher will document all discussions as may be necessary for their own records and to inform the process at Section 3 (Incapacity Hearings) of this procedure should a case progress to that stage.

2.3.5. For those teachers identified under 2.3.3.1. (h) above, a performance monitoring and review period will follow the third formal capability meeting and the following arrangements under Stage 4 shall apply.

2.4. **STAGE FOUR CAPABILITY MEETING (REFER TO APPENDIX D, PAGE 14)**

FOR THOSE TEACHERS IDENTIFIED UNDER c) AT PARAGRAPH 2.2.3.; THOSE TEACHERS IDENTIFIED UNDER f) AT PARAGRAPH 2.3.1. AND THOSE TEACHERS IDENTIFIED UNDER h) AT PARAGRAPH 2.3.3.1.

2.4.1. Formal monitoring, evaluation, guidance and support will apply during the review period. On conclusion of the review period the teacher will be invited to a **stage four capability meeting**. This meeting will consider the performance of the teacher during the review period's set at paragraphs c), f), h) and will provide for one of two outcomes as below:

- i) the head teacher is satisfied that the teacher has made sufficient improvement and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end, or;
- j) no, or insufficient improvement has been made during the monitoring and review period.

In these circumstances the teacher will be invited to an Incapability Hearing (Section 3) in accordance with the framework below. The teacher will at this point be formally suspended on full pay pending the convening of the incapability hearing (Section 3).

(because of the seriousness of the circumstances where a teacher has reached this stage, the standard of 'further warnings' will not apply).

SECTION 3.0 INCAPABILITY HEARINGS

- 3.1.** The Clerk to the Governing Body should write to the teacher informing them of the convening of an Incapability Hearing, giving at least 10 working days notice. The letter should provide the teacher with a choice of dates and times for the hearing. The letter must explain that the hearing will consider whether the individual should be dismissed because of their inability to carry out the duties of his/her post to a satisfactory standard due to lack of capability. The letter should inform the teacher of their right to representation. The letter should ask the teacher to respond to confirm his/her intention to attend the Hearing.
- 3.2.** Where the teacher does not indicate attendance at the incapability hearing, the First Committee will consider hearing the case in their absence.
- 3.3.** The letter from the Clerk to the Governing Body should include details of all documentary evidence to be submitted to the incapability hearing, the names of any witnesses to be called by the head teacher and also a copy of the Schools/Centre for Learning Capability procedure. This letter and all relevant papers will be made available to the Governors First Committee. Witness statements will only be submitted in evidence to any incapability hearing where the witnesses have indicated a willingness to attend a hearing and are prepared to be questioned by all parties on his/her statement. When a witness fails to attend a hearing, the notes of his/her statement will not be entered into evidence.
- 3.4.** The teacher should submit, to the Clerk to the Governing Body, any documentation and details of witnesses he/she intends to call to the hearing at the earliest opportunity but this must be at least 5 working days in advance of the hearing. The employee must also include a statement highlighting their defence. All submitted papers will be made available to the head teacher and Governors First Committee in advance of the Incapability Hearing.

The procedure for the conduct of an incapability hearing is attached as Appendix E, [page 15].

3.5. DECISION TO DISMISS (FIRST COMMITTEE)

- 3.5.1.** If a decision to dismiss is taken, the Governing Body will dismiss the teacher with notice in writing within 7 working days of the date of the hearing. The dismissal letter will afford the right of appeal.

SECTION 4.0 APPEALS

- 4.1.** Appeals are not intended to allow for individuals to present the same information to a second panel and as such the grounds for appeal must be clearly stated. Notification of a disagreement with the First Committee's decision is not sufficient enough reason on its own as grounds for appeal.
- 4.2.** On receipt of written notification of an appeal, the Clerk to the Governing Body, or other appropriate person will convene a Governors Appeal Committee. Such Governors will, as a matter of course, be provided with copies of the head teacher's Statement of Case presented to the First Committee, any papers presented in evidence by the teacher to the Incapability Hearing and the notes taken of the Incapability Hearing by the note taker.
- 4.3.** The teacher should be informed in writing giving at least 10 working days notice of the date of the Appeal Hearing date. Where possible, more than one date and time for the Appeal Hearing should be given for the teacher to choose from. The letter to the teacher will confirm that he/she has the right to be represented at this Appeal Hearing.
- 4.4.** The letter should request that the teacher responds to the Clerk to the Governing Body with their preferred date for the Appeal Hearing to take place, no later than 5 working days before the earliest date offered to the employee. Should the employee not respond in accordance with the timescale identified in this paragraph, then the Appeal Hearing will take place on the earliest of the dates offered. Should the teacher and/or his/her representative subsequently not attend the Appeal Hearing, the Governors Appeal Committee will by default, uphold the original decision reached by the First Committee.
- 4.5.** No new written evidence may be presented outside of the paperwork submitted to the First Committee and the teachers appeal letter.

If an appeal is submitted, the procedure for the conduct of an appeal hearing is attached as Appendix F, [page 16].

4.6. DECISION TO DISMISS (APPEALS)

4.6.1. Voluntary Aided Schools

The decision of the Appeals Committee will be confirmed to the teacher in writing within 7 working days.

The flow chart illustrated in Appendix G, [page 17] describes the dismissal process for Voluntary Aided Schools.

4.6.2. Community School and Community Special Schools

Where the Appeals Committee decides to reject the appeal they will confirm their decision in writing within 7 working days.

The Appeals Committee will notify the Local Authority of its decision and the reasons for it. The Local Authority must dismiss the teacher within 14 days of the date of the notification.

The flow chart illustrated in Appendix H, [page 18] describes the dismissal process for Community and Special Schools.

SECTION 5.0 GENERAL PRINCIPLES UNDERLYING THIS PROCEDURE

5.1. Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant legislation.

5.2. Definitions

Unless indicated otherwise, all references to 'teacher' will include head teacher.

5.3. Delegation

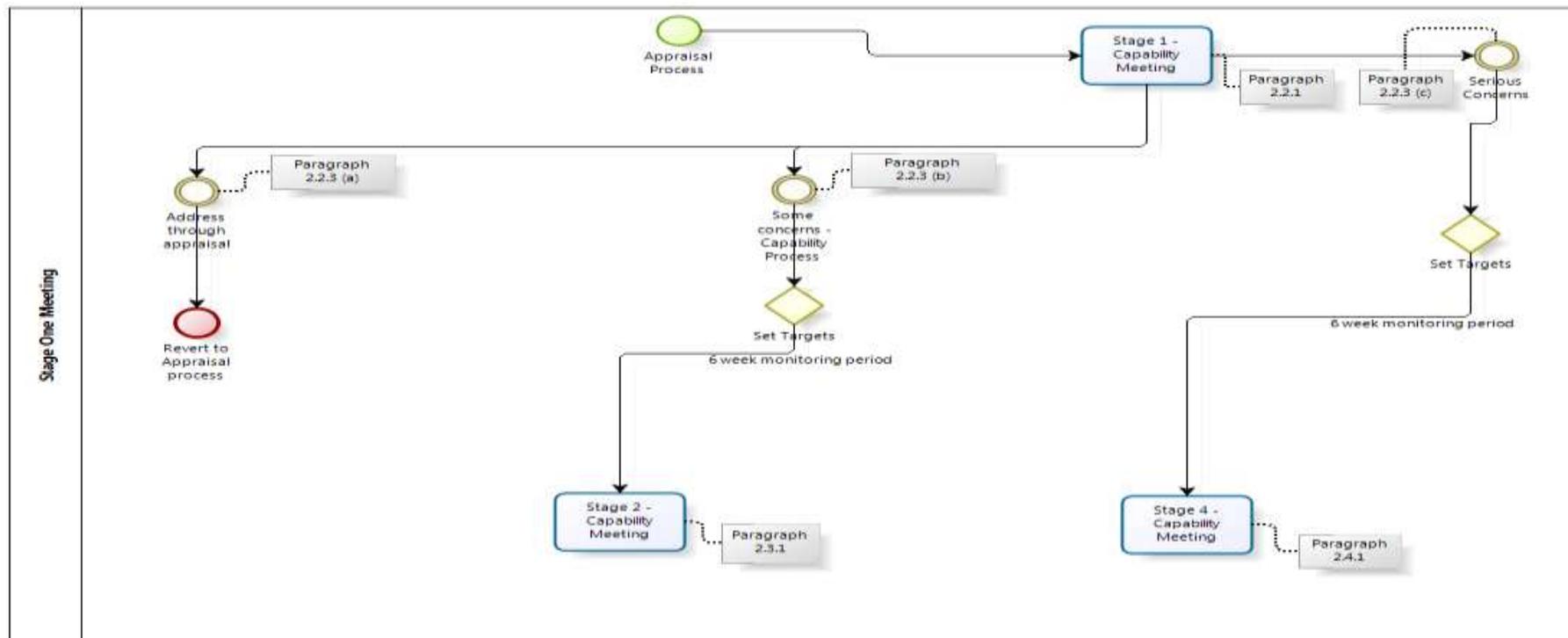
Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

5.4. Grievances

Where a member of staff raises a grievance during the capability procedure the process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

TEACHER CAPABILITY PROCESS STAGE ONE CAPABILITY MEETING FLOW CHART

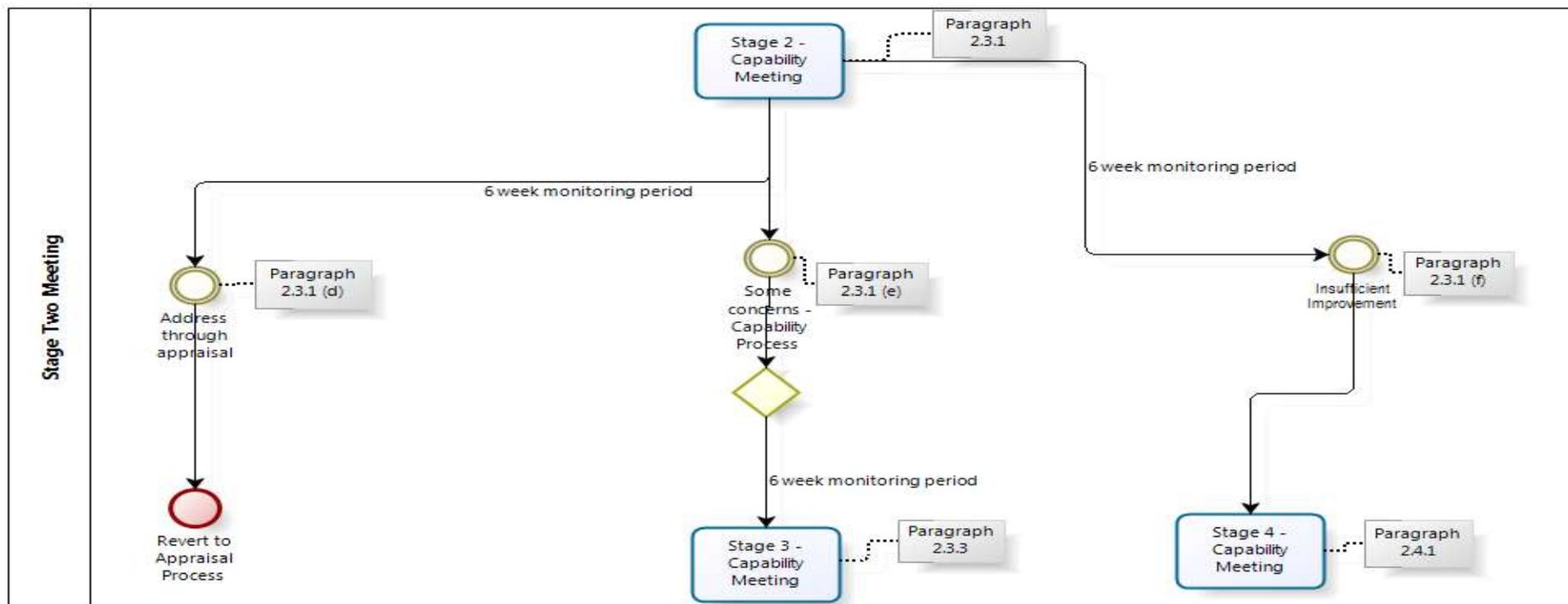
APPENDIX A



TEACHER CAPABILITY PROCESS

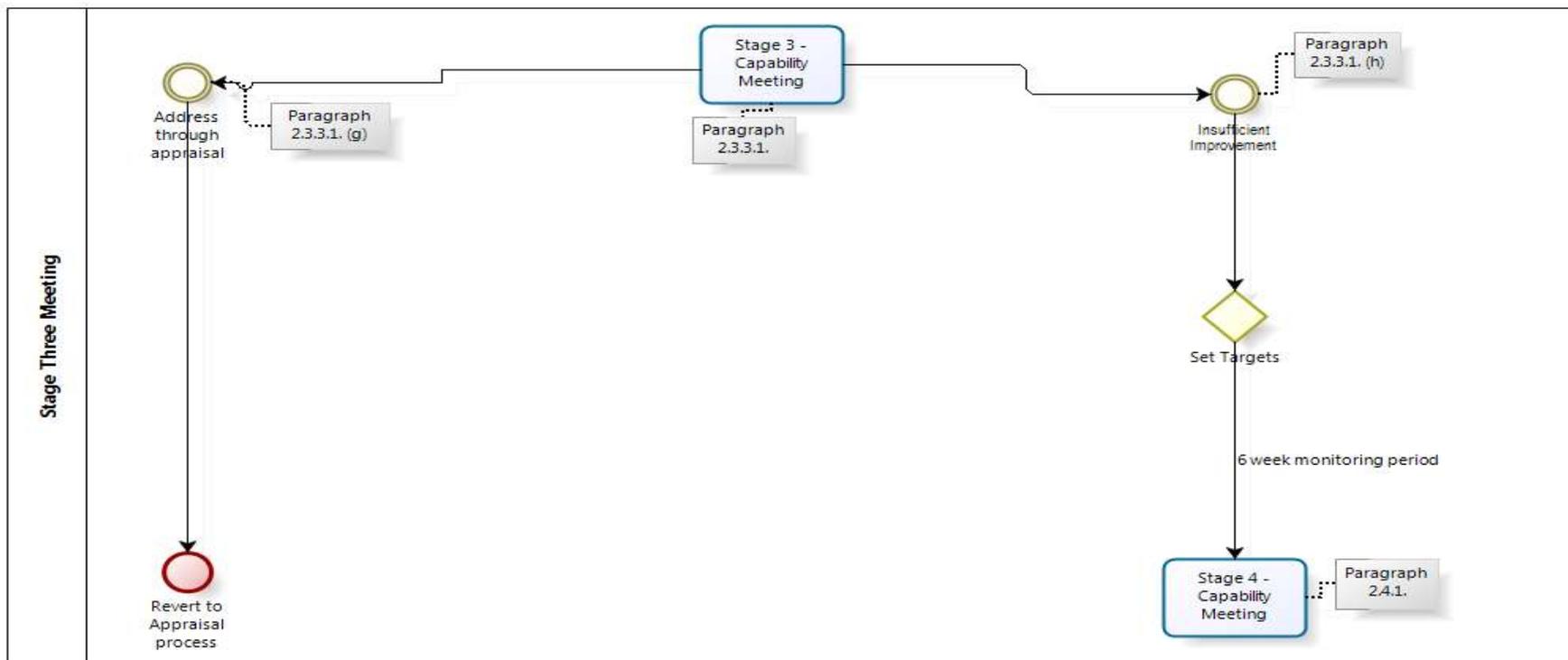
STAGE TWO CAPABILITY MEETING FLOW CHART

APPENDIX B



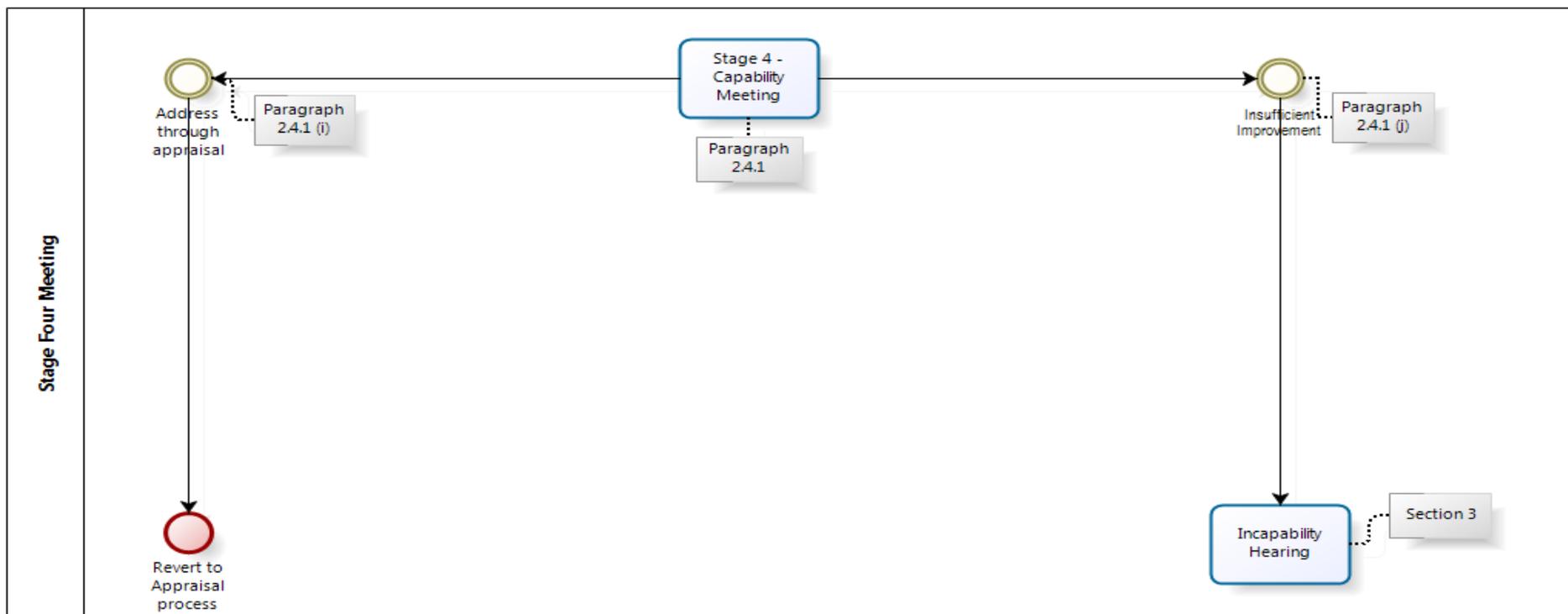
TEACHER CAPABILITY PROCESS STAGE THREE CAPABILITY MEETING FLOW CHART

APPENDIX C



TEACHER CAPABILITY PROCESS STAGE FOUR CAPABILITY MEETING FLOW CHART

APPENDIX D



PROCEEDINGS AT INCAPABILITY HEARINGS

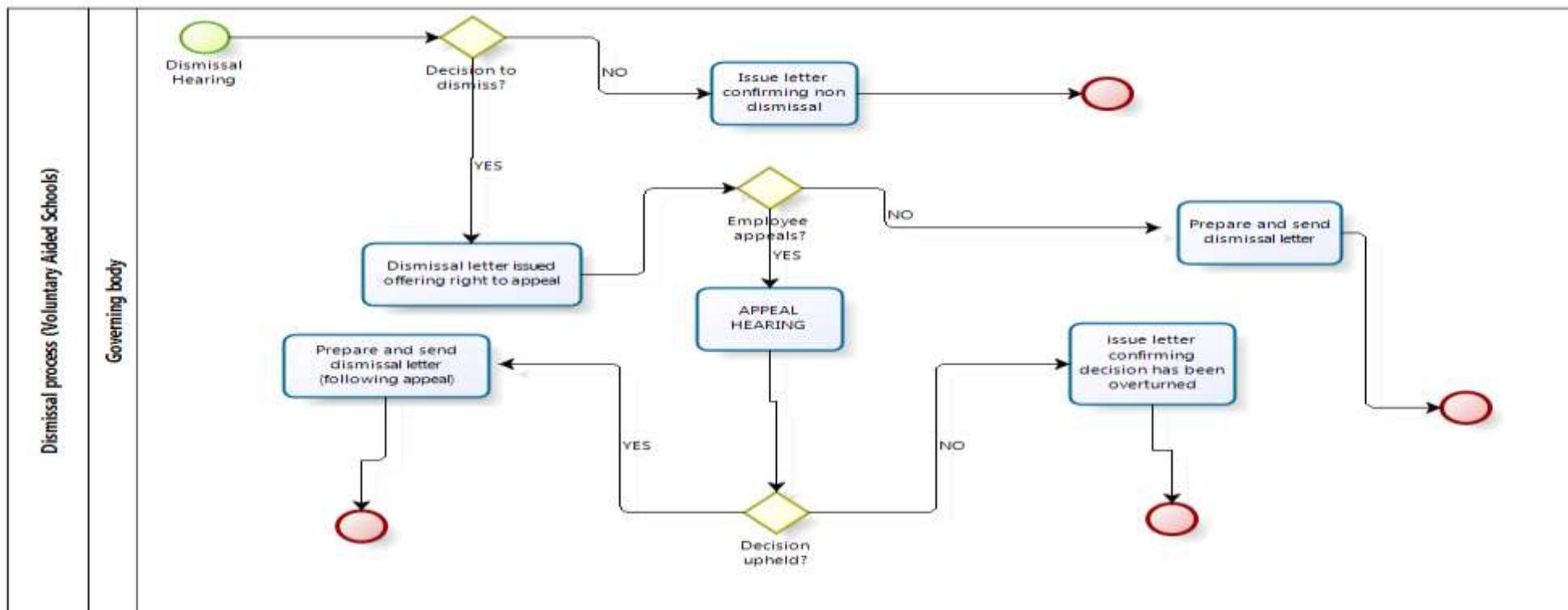
1. The hearing will be held by the Governors First Committee, who will be advised by a representative of the Executive Director of Children and Family Services, this will usually be an Employee Relations (ER) Officer.
2. The Chairperson of the First Committee will ask all individuals present to introduce themselves.
3. The head teacher, who may be accompanied by a representative of the Executive Director of Children and Family Services, usually an ER Officer, should present the case that the teacher is unable to carry out the requirements of his/her post due to lack of capability and may call witnesses as appropriate to support the case. Witnesses will only attend the hearing at such time as they are giving their evidence and being questioned by the head teacher, the First Committee or the teacher and or his/her representative.
4. The teacher and/or his/her representative may question the head teacher on any aspect of his/her case.
5. The teacher and/or his/her representative should offer representations to the First Committee. Witnesses may be called as appropriate as per paragraph 3 above.
6. The head teacher may question the employee or his/her representative on any aspect of his/her case.
7. The First Committee may question either party and witnesses at any time as considered appropriate. Such questioning will be managed by the Chair of the First Committee.
8. Both parties, starting with the Head teacher, may sum up their case if they wish. No new material may be added at this stage.
9. Both parties will then withdraw whilst the First Committee consider the evidence presented during the Incapability Hearing. At any time the First Committee may recall parties to clarify points of uncertainty relating to the information already given. If this is necessary, both parties will return even if clarification is required from only one party.
10. Both parties will return and the Chair of the First Committee will announce the decision. The First Committee will have delegated power to decide any of the following:
 - That there are insufficient grounds to determine that the teacher is unable to carry out the requirements of his/her post due to lack of capability.
 - The employee should be dismissed due to being unable to carry out the requirements of his/her post resulting in a lack of capability, subject to his/her right to appeal to the Governors Appeal Committee.

PROCEEDINGS AT APPEAL HEARINGS

1. The hearing will be held by the Governors Appeal Committee, who will be advised by a representative of the Executive Director of Children and Family Services, this will usually be an Employee Relations (ER) Officer.
2. The Chairperson of the Appeal Committee will ask all individuals present to introduce themselves.
3. The Teacher will and/or his/her representative will present the grounds for appeal and will have the opportunity to call the same witnesses used for the First Committee. Witnesses will only attend the hearing at such time as they are giving their evidence and being questioned by the Chair of the First Committee or the Appeals Committee.
4. The Chair of the First Committee and/or the Appeals Committee may question the teacher on any aspect of the appeal.
5. The Chair of the First Committee should offer representations to the Appeals Committee. Witnesses may be called as appropriate as per paragraph 11.3 above.
6. The teacher and/or his/her representative on any aspect of his/her case.
7. The Appeals Committee may question either party and witnesses at any time as considered appropriate. Such questioning will be managed by the Chair of the Appeals Committee.
8. Both parties, starting with the teacher, may sum up their case if they wish. No new material may be added at this stage.
9. Both parties will then withdraw whilst the Appeals Committee consider the evidence presented during the Appeal Hearing. At any time the Appeals Committee may recall parties to clarify points of uncertainty relating to the information already given. If this is necessary, both parties will return even if clarification is required from only one party.
10. Both parties will return and the Chair of the Appeals Committee will announce the decision.
11. The Appeals Committee may decide any of the following:
 - Uphold the appeal
 - Reject the appeal and confirm the decision of the First Committee.The date of dismissal will take effect from the date of the first hearing.

TEACHER CAPABILITY PROCESS DISMISSAL PROCESS FLOW CHART (VOLUNTARY AIDED SCHOOLS)

APPENDIX G



TEACHER CAPABILITY PROCESS DISMISSAL PROCESS FLOW CHART (COMMUNITY SCHOOLS)

APPENDIX H

