



Southend East Community Academy Trust

“Strong Partnerships, Strong Community, Strong Schools”

Capability Policy & Procedure for Teaching & Support Staff

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PART 1: Teaching Staff Capability Policy

1. Introduction

Revised appraisal arrangements for teachers come into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which replace the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations).

The Appraisal Regulations set out the principles that apply to teachers. They retain the key elements of the 2006 Regulations and provide the minimum national framework within which schools/academies should operate. The Department for Education (May 2012) states that, if they wish, schools may include in their own policies details that are no longer covered by the Appraisal Regulations.

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).

Schools and local authorities must have an appraisal policy for teachers and a policy, covering all staff, which deals with lack of capability. Part 1 of this policy applies only to teachers, including head teachers, whilst part 2 covers associate staff. Southend-on-Sea Borough Council has consulted with the recognised teacher trade unions on this policy adopted by SECAT.

This policy covers capability and is based on the previous Borough model policy and Part B of the Department for Education model (May 2012). On 1 September 2012 the Department for Education model superseded the previous national performance management policy and guidance, which had been designed to support the 2006 Regulations.

The policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. Capability procedures apply only to teachers and head teachers about whose performance there are serious concerns that the appraisal process has been unable to address.

In this policy **text in bold** indicates statutory requirements contained in the Appraisal Regulations or the School Staffing Regulations as advised by the Department for Education.

2. Purpose

SECAT is committed to providing the highest quality service to pupils and the public. In order to do this, it is dependent on its workforce to perform effectively at all times.

Most employees are competent, effective and are able to develop through the range of opportunities offered by SECAT. There are, however, occasions when a significant gap may develop between the requirements of the job and an employee's performance and, if left unchecked, the situation may threaten the success of pupils and SECAT.

This policy is designed to help and encourage teachers whose performance falls below the level required to achieve and maintain the standard of job performance expected by the members of SECAT. When issues of capability arise where substandard performance relates to a lack of the required knowledge, skills or ability rather than misconduct, the employee should, wherever practicable, be assisted through training or coaching and given reasonable time to achieve the required standard.

3. Definition

For this policy and procedure, lack of capability is defined as a situation in which a teacher fails consistently to perform his or her duties to a professionally acceptable standard.

The policy and procedure does not deal with a lack of capability due to ill health, nor with misconduct, which may be defined as an act or omission by a teacher which is considered to be unacceptable professional behaviour. These issues will be considered under the Sickness Management or Disciplinary Processes, as appropriate.

4. Application

This policy and procedure applies equally to all teachers in SECAT - the Headteachers, senior teachers in management positions and all classroom teachers. In the case of any Headteacher, the Chair and Trustees will seek professional advice from their HR Advisors or from an appropriate person to take action under this procedure.

Where this policy and procedure refers to “teachers”, this applies to all teaching staff, including the Headteacher, but if it is the Headteacher who is being considered under the procedure then it will be relevant Governors delegated by the relevant Local Governing Body who take the appropriate action, in consultation with the CEO and the Trustees.

This policy and procedure to assist teachers experiencing difficulties in achieving an acceptable level of professional performance has been reviewed against the procedure issued by the former DfE and agreed with the recognised teacher trade unions. It is in line with ACAS guidance.

6. Principles

The first concern of SECAT will be to ensure that any teachers who experience persistent difficulty in their duties in any of the member schools receive appropriate and reasonable assistance, support and training to assist them to remedy the deficiencies giving rise to concern.

Under-performance or lack of capability as a teacher may manifest itself in different ways. Some examples are:

- poor class control
- lack of practical proficiency, perhaps evidenced by pupil underachievement or poor attendance
- inability to apply new professional concepts and/or requirements to their work
- poor planning and/or organisation of lessons or other work
- and for more senior teaching staff, the inability to fulfil a higher level of responsibilities

Each case will be different and will need to be considered on an individual basis. Sometimes the under-performance may be short-lived and, given prompt help, the teacher may be able to remedy the deficiencies by support or further experience. In other cases, assessment over a longer period of time will be essential. Where the concerns are very serious, however, **the period given for improvement after the date of a formal warning will be no more than four weeks.**

Where a teacher's capability is in question and it is anticipated that this policy and procedure may be invoked, they will be provided with a copy of this procedure at the informal stage (or formal stage if the informal stage is not used) and they will be encouraged to be accompanied to meetings called under this procedure by a trade union representative or work colleague.

Where there are concerns regarding a teacher's or the Headteacher's performance, then SECAT Academies will use this capability policy and procedure and the provisions of the performance management appraisal policy will be suspended until the concerns are resolved to SECAT's satisfaction.

7. Role of Governors

Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in a capability procedure against a Headteacher when some governors may be involved in the monitoring and evaluation of performance. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal and dismissal appeal committees.

8. Role of Advisers

SECAT Academies may use a suitable external person with education and personnel experience from their HR Advisers or elsewhere to advise SECAT and, where appropriate assist with the process, including classroom observation and providing support.

9. Representation at formal interview, evaluation meetings and dismissal hearings

A teacher has a legal entitlement to be accompanied by a colleague or union representative. If the teacher's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the teacher proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the relevant SECAT Academy must rearrange the event to the time proposed by the teacher.

10. Notice

Notice of 5 working days (or 7 consecutive days out of term time) must be given for an initial formal capability interview. Notice of at least 10 working days (or 14 consecutive days out of term time) must be given for a staff dismissal committee or dismissal appeal hearing.

11. Support for the teacher

Those monitoring the performance should offer feedback and instruction to help the teacher improve performance. If training courses or assistance from colleagues would be helpful these should be arranged, if it is reasonable to do so, as soon as possible but should not interrupt the timing of the procedure.

12. Monitoring Arrangements

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

13. Written Records

A written record should be made of all meetings with the teacher and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded for capability purposes after a specified period of satisfactory performance. These periods are 2 terms for a written warning and 6 terms for a final written warning.

14. Confidentiality

The appraisal and performance management process and records will be treated with confidentiality at all times.

15. Staff who are absent through illness during the procedure

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, should be referred immediately to the occupational health adviser to assess whether the teacher is fit for continued employment. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend evaluation meetings, but where the teacher is unable to attend, these may proceed in the teacher's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

16. Decisions on continuing the procedure and recommending dismissal

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the relevant Headteacher, or by the delegated member of the senior leadership team (except where the Headteacher's performance is being considered). If there is a difference of opinion, the relevant Headteacher's decision should prevail except where the Headteacher's performance is being considered.

17. Timetable

References to terms throughout the procedure and these notes on applying the procedure are taken to mean the normal Academy term lengths for schools that operate a three term academic year.

18. Disputes about the procedure

Any disagreements or grievances about the interpretation of the policy or procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

19. Appeals against formal warnings

Appeals may be heard by a senior manager, a Local Authority adviser or an individual governor/trustee. Governors/Trustees may be used only where this does not compromise the availability of previously uninvolved governors to staff the dismissal and dismissal appeal committees. However, previous involvement does not necessarily mean that a governor is tainted and thereby ineligible to serve on a dismissal or dismissal appeal committee.

Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities. A teacher is entitled to be accompanied at an appeal hearing by a colleague or union representative.

The appeal decision should be confirmed in writing and the teacher told that there is no further appeal against the decision. Where the reasonableness of the decision is being questioned the test that should apply for overturning a formal warning is that the decision was so unreasonable that it was one that no other Headteacher or manager, acting with proper regard to his or her responsibilities, could have chosen to take. Where an appeal is upheld the matter should be referred back to the relevant Headteacher or manager to be reconsidered for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

20. Disputes about the procedure

Any disagreements or grievances about the interpretation of the policy or procedure, or the application of any related matters not covered in the policy or procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

Delegation

- Formal meetings under the Procedure should be chaired by the relevant Headteacher or a senior manager with delegated powers.
- Appeals against termination of contract will be heard by a Staff Appeal Committee of Governors.
- Where the Headteacher is themselves the subject of the meeting or hearing then the meeting or hearing shall be undertaken in accordance with the SECAT Scheme of Delegation

PART 1: Teaching Staff Capability Procedure

1. Introduction

SECAT is committed to high standards and providing value for money services. It recognises the contribution that each employee can make to achieve SECAT's aims.

The purpose of this procedure is to provide a process for dealing with those situations where there are unacceptable performance standards as defined in the capability policy and to encourage the employee to achieve and maintain a satisfactory standard of performance. It is intended to deal with those cases where, despite reasonable management support, the employee remains lacking in some area of ability, skill, competence or knowledge and is consequently unable to carry out the required duties to an acceptable standard.

The procedure provides an opportunity for:

- Encouragement, support and assistance
- A structured and clear path for improvement
- Discussion and consideration of all the relevant factors
- The manager and employee to work together
- Employee representation

Managers should discuss the situation with their HR provider before any action under the formal capability procedure is taken. Support will be provided by the HR provider who should provide all the required documentation, including sample letters, to ensure that the process is carried out with equal consistency throughout SECAT.

2. Information Gathering Stage

It is important that performance problems are clearly identified and investigated and then given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information and systematic recording.

The appropriate SECAT Academy will investigate whether the employee has been made aware of expected standards, or should reasonably know them from their qualification or other training, or would be expected to have updated themselves as part of an individual's professional responsibility as a teacher and/or Academy manager.

Performance problems may be identified from single incidents, from routine checks of records or statistics (for example pupil progress, pupil attendance or regular failure to submit reports on time), from regular management meetings with the line manager or from performance management in the appraisal process.

Once the facts are gathered and the seriousness of the problem established there are three initial options: -

- No further action required under the capability procedure and the appraisal process will continue as normal; or
- Informal Stage - (less serious situations) arrange support and monitoring; or
- Formal Stage - (for more serious situations) arrange a Formal Capability Meeting and notify the teacher in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure

3. Informal Stage

3.1 In less serious situations, where it is anticipated that performance can be improved within a reasonable time to the appropriate level by support without using the formal procedure, counselling and informal coaching may be used with the aim to encourage and help the teacher to improve. It should be conducted discreetly.

3.2 A meeting will be called by the relevant Headteacher, or delegated member of the Senior Leadership Team, with 5 working days (or 7 consecutive days out of term time) notice, at which the teacher, who may be accompanied by their trade union representative or colleague if they wish, must be given an opportunity to respond. Explanations should be considered carefully and no further action taken under the capability procedure if it becomes evident that there is no case to answer and the normal appraisal process will continue. If, however, there are continuing concerns then the teacher must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement.

3.3 A note of the discussions should be put in writing following the meeting including targets, times, dates and success criteria, and who is monitoring them. Written notes or websites may be provided, giving practical advice on classroom methods, lesson planning, or whatever the particular problem may be. If development needs are identified, the relevant Headteacher or delegated member of the Senior Leadership Team, may suggest further training within the associated Academy or by attendance at in-service courses, or visits to other schools, subject to the staffing or resource implications for the SECAT Academy.

3.4 The monitoring process should be under the guidance of a designated member of staff who is competent and experienced to assist the teacher in their work. This support process should provide observations and feedback to enable the employee to understand whether the actions they are endeavouring to implement are effective or not and for the relevant Headteacher or delegated member of the Senior Leadership Team, to decide action at the end of the review period.

3.5 The teacher shall be given a period of up to eight weeks to achieve improvement and at the end of that period a second meeting will take place to review the position.

3.6 If, after the agreed period of support and supervision, the relevant Headteacher or delegated member of the Senior Leadership Team, is satisfied that progress is being made, the process may be modified or terminated and the teacher informed accordingly. In this way many of the difficulties will be resolved within the SECAT Academy and without recourse to more formal procedures.

3.7 If during the review period more serious concerns regarding the teacher's past or current performance come to light, the relevant Headteacher or delegated member of the Senior Leadership Team, may decide to move immediately to the Formal Stage of this procedure, without completing the Informal Stage.

3.8 The meeting at the end of the review period will be called by the relevant Headteacher, or delegated member of the Senior Leadership Team, with 5 working days (or 7 consecutive days out of term time) notice, at which the teacher, who may be accompanied by their trade union representative or colleague if they wish, will be informed of observations and feedback and given an opportunity to respond.

3.9 If the relevant Headteacher or delegated member of the Senior Leadership Team, accepts that targets have been met according to the success criteria and that satisfactory standards have been attained, that shall be stated, there shall be no further action under this procedure and the normal appraisal process will continue. If not, then further action shall be taken under the formal stage that follows and a letter advising of the date of a Formal Capability Meeting shall be sent to the teacher.

4. Formal Stage

4.1 Progression to the Formal Stage

The formal stage of the procedure will be commenced by a Formal Capability Meeting as set out below if:

- a) at the end of the informal stage period of supervision, no significant improvement is evident, or
- b) at the time of the information gathering stage there are serious concerns and action under the informal stage would not be sufficient,

4.2 Formal Capability Meeting

a) The relevant Headteacher will convene a formal capability meeting. The teacher will be informed in writing, giving at least 5 working days (or 7 consecutive days out of term time) notice, of the meeting and the nature of the concern(s) as to the perceived lack of capability, as well as their right to be accompanied by a trade union representative, or work colleague. A copy of this procedure, and of any documents or evidence brought forward from the informal stage to these proceedings, should be included with the letter.

b) The meeting should take the form of a formal recorded meeting with the teacher, who has the right of response. The teacher must be given the opportunity to make a case and/or to make a written response.

c) The meeting may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned by the relevant Headteacher for an appropriate length of time to allow this to happen. If the relevant Headteacher does not require further investigation then they will adjourn the meeting to consider the appropriate option before delivering a decision to the teacher, either by recalling them or by letter.

d) The relevant Headteacher may decide to:

- Adjourn the meeting for a further period, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information
- No further action required (where new information, or a different slant on the information collected, or further investigation means there is no case to answer, or it is trivial, or that the matter is not as serious as it first seemed)
- Action the Informal Stage - arrange support and monitoring, except where this has already been undertaken without improvement
- Issue a formal warning (where there is continued concern about the standard of performance)
- Issue a final written warning (in cases of very serious concern)

The decision will depend upon the seriousness of the problem. A formal warning will invoke an **assessment period of a maximum of two terms**, but the period will normally be less and is at the discretion of the relevant Headteacher. A final written warning will invoke an assessment period not exceeding 4 weeks.

e) Where a formal or final warning is issued, the relevant Headteacher or manager will use the remainder of the meeting to:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- 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 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 teacher improve their performance;
- Set out the timetable for improvement, explain how performance will be monitored and set a date for the next/final evaluation meeting; and
- Make it clearly understood that failure to improve may lead to dismissal

f) A letter will be sent to the teacher by the relevant Headteacher within 5 working days (or 7 consecutive days out of term time) of the formal meeting, recording the result of the investigations, the main points discussed at the meeting and confirming the decision. Where a formal or final warning is issued, the letter will include a warning that failure to improve to a satisfactory standard within the set timescale could result in further action, up to and including dismissal, being taken on the grounds of incapability and give information about the handling of the formal stage, including the length of the assessment period, and the right of appeal against the issue of the warning.

- g)** The teacher will have the right of appeal against the decision to issue a formal or final warning and, in these situations, the appeal may be considered by a senior manager of SECAT who is not directly involved in the case, a Local Authority adviser, or by an individual Governor of any Academy. Any appeal against a warning must be made within 5 working days (or 7 consecutive days out of term time) of receipt of the letter from the relevant Headteacher.
- h)** Any appeal against the decision to issue a formal or final warning will be conducted by holding a meeting with the teacher and their trade union representative, or work colleague, together with the relevant Headteacher, and the outcome notified in writing within 5 working days (or 7 consecutive days out of term time). Any appeal must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.
- i)** The relevant Headteacher will arrange a further period of performance monitoring and review period during the assessment period, during which the teacher's progress can be monitored and further support and assistance may be given as appropriate. SECAT may use an experienced member of Academy staff, or a suitable external person from the Local Authority or elsewhere, to assist in advising on progress and supporting the teacher may be used. The Formal Capability meeting will have informed the teacher what level of performance is expected, the clear targets set and what success criteria have been identified, but if the relevant Headteacher believes that further details are required they will be provided. The teacher shall be informed of the time limits and end date of the assessment period. During this process continued feedback should be provided to enable the employee to appreciate whether the action they are endeavouring to implement are effective or not.
- j)** A final assessment will then be made by the reviewer taking account of feedback with all those involved in the guidance and supervision of the teacher. The assessment will be discussed at the Formal Review meeting with the member of staff by the relevant Headteacher and any adviser unless the teacher was issued with a final written warning, in which case they will be invited to a Decision Meeting (see below).
- k)** The relevant Headteacher will convene the Formal Review meeting at the end of the assessment period. The teacher will be informed in writing, giving at least 5 working days (or 7 consecutive days out of term time) notice, of the meeting and their right to be accompanied by a trade union representative, or work colleague.
- l)** If during the assessment period following a formal warning, more serious concerns regarding the teacher's past or current performance come to light, the relevant Headteacher may decide to move immediately to a Final Warning, with the assessment period not exceeding 4 weeks, and at the end of this assessment period the situation will be reviewed at a Decision Meeting, not a Formal Review meeting.

4.3 Formal Review

a) At the end of the monitoring period following the Formal Capability meeting, the relevant Headteacher will convene a Formal Review meeting. The date will have been set at the Formal Capability meeting or the teacher will be informed in writing, giving at least 5 working days (or 7 consecutive days out of term time) notice, of the meeting and the nature of the concern(s) as to the perceived lack of capability, as well as their right to be accompanied by a trade union representative, or work colleague.

b) The assessment of the teacher's progress will be discussed by the relevant Headteacher, and any adviser, with the teacher and any trade union representative, or work colleague.

c) If, after this discussion, the relevant Headteacher:

- i. is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start, or
- ii. is not satisfied that the teacher has made sufficient improvement but some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period, or
- iii. considers the standard of professional performance of the member of staff still to be unacceptable then:
 - If a formal warning was issued at the Formal Capability meeting then a final written warning will be given by the relevant Headteacher. The teacher will be told clearly that failure to achieve an acceptable standard within the set timescale, with confidence that it can be maintained, may result in dismissal.
 - If a final written warning was issued at the Formal Capability meeting then the relevant Headteacher will refer the teacher to a Decision Meeting without any further assessment period, review or other action.

d) A final written warning issued at the Formal Review meeting will invoke an assessment period not exceeding 4 weeks. At the end of this assessment period the situation will be reviewed at a further Formal Review Meeting.

e) Where a final warning is issued at the Formal Review meeting, the relevant Headteacher or manager will use the remainder of the meeting to:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- 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 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 teacher improve their performance;
- Explain how performance will be monitored and reviewed over the following weeks;

- Identify the timetable for improvement and set a date for a further Formal Review which will be the final evaluation meeting; and
- Make it clearly understood that failure to improve may lead to dismissal

f) A letter will be sent to the teacher by the relevant Headteacher within 5 working days (or 7 consecutive days out of term time) of the formal interview, recording the result of the investigations, the main points discussed at the meeting and confirming the decision.

- Where a final warning is issued at the Formal Review meeting, the letter will include a warning that failure to improve to a satisfactory standard could result in further action, up to and including dismissal, being taken on the grounds of incapability and give information about the handling of the formal stage, including the length of the assessment period, and the right of appeal against the issue of the warning.
- Where a final written warning was issued at the Formal Capability meeting and the relevant Headteacher's decision at this meeting is to refer the teacher to a Decision Meeting, the teacher will be informed in the letter that the Decision Meeting could decide to dismiss on the grounds of incapability and give information about the hearing process as well as their right to be accompanied by a trade union representative, or work colleague.

g) The teacher will have the right of appeal against a decision to issue a final warning at the Formal Review meeting and, in these situations, the appeal may be considered by a senior manager of SECAT who is not directly involved in the case, a Local Authority adviser, or by an individual Governor. Any appeal against a warning must be made within 5 working days (or 7 consecutive days out of term time) of receipt of the letter from the Headteacher.

h) Any appeal against the decision to issue a final warning at the Formal Review meeting will be conducted by holding a meeting with the teacher and their trade union representative, or work colleague, together with the relevant Headteacher and the outcome notified in writing within 5 working days (or 7 consecutive days out of term time). Any appeal must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

i) If a final warning was issued at the Formal Review meeting then, at the end of the period of review, the relevant Headteacher will convene a further Formal Review meeting with the purpose of undertaking a final evaluation to consider whether the required improvement in performance has been secured. The date will have been set at the Formal Review meeting or the teacher will be informed in writing, giving at least 5 working days (or 7 consecutive days out of term time) notice, of the meeting and the nature of the concern(s) as to the perceived lack of capability, as well as their right to be accompanied by a trade union representative, or work colleague.

j) The teacher's performance during the period of review will be discussed by the relevant Headteacher and any adviser with the teacher and any trade union representative, or work colleague. If, after this discussion, the relevant Headteacher is satisfied that the teacher has made sufficient improvement and that satisfactory standards have been attained, the capability procedure will cease and the appraisal process will re-start. If the relevant Headteacher considers that no significant

sustained improvement is evident the teacher will be told that the matter will be referred to a Decision Meeting where a panel of the relevant Local Governing Body will consider dismissal.

k) A letter will be sent to the teacher by the relevant Headteacher within 5 working days (or 7 consecutive days out of term time) of the Formal Review meeting, recording the result of the assessment, the main points discussed at the meeting and confirming the decision. Where the Headteachers decision is to refer the teacher to a Decision Meeting the teacher will be informed that the hearing could decide to dismiss on the grounds of incapability and give information about the hearing process as well as their right to be accompanied by a trade union representative, or work colleague.

l) If, during the review period, it is clear that the reports upon teacher's performance remain unsatisfactory, consideration will be given by the relevant Headteacher to exploring the scope for suitable alternative employment within SECAT, if available. Any search for alternative employment must not interrupt the progress of the procedure, unless likelihood of successful redeployment leads to the matter being reconsidered.

4.4 Decision Meeting

a) If, at the end of the period of review following a final written warning, the relevant Headteacher decides to refer the teacher to a Decision Meeting, the matter will be referred to a panel of three governors/trustees who will act as a Staff Dismissal Committee of the Local Governing Body, with delegated powers to on the grounds of incapability if they so decide. The Committee will be advised by an HR Adviser.

b) The following paragraphs outline the procedure which should be used in the Decision Meeting.

- i. Prior to the Decision Meeting the relevant Headteacher should:
 - Prepare a written report on the teacher, recording their qualifications, employment record and any previous consideration under this procedure and;
 - Obtain relevant written evidence, which may include the relevant Headteacher's or adviser's own report and such other written statements, as may be required for compilation of case papers.
- ii. At least ten working days (or 14 consecutive days out of term time) before the date of the Decision Meeting the teacher and their representative shall be:
 - notified in writing of the date, time and place of the Decision Meeting and receive a copy of this procedure;
 - supplied with the case papers and all written evidence prepared by the relevant Headteacher for the hearing;
 - notified in writing of the purpose of the hearing, the possibility of dismissal and of his/her right to be represented by a trade union representative or another person;
 - notified in writing of their right to call witnesses and submit written statements for circulation to the members of the Staff Dismissal Committee prior to the date of the Decision Meeting;

- iii. Five working days (or 7 consecutive days out of term time) before the date of the Decision Meeting the teacher shall:
- advise the relevant Headteacher whether they intend to be present at the hearing and be accompanied, and if so, by whom;
 - advise the relevant Headteacher how many witnesses it is intended to call.
 - supply the relevant Headteacher with copies of any written statements or documents which the teacher wishes distributed to Staff Dismissal Committee members prior to the date of the hearing.
- c) The Decision Meeting will be conducted in accordance with Appendix 1 and the Staff Dismissal Committee should, after following the procedure outlined above, decide:
- the capability procedure will cease and the appraisal process will re-start but no other action will be taken; or
 - to take such action short of dismissal as they consider appropriate, having regard to the needs of both the teacher and Academy within SECAT e.g. return to the formal stage of the procedure for a further period of monitoring, additional training and support, revised supervision arrangements, changes to role undertaken etc.
or
 - to dismiss the teacher on the grounds of incapability.
- d) A local governing/trustee body has no power to transfer a teacher to a post in another school or to an unattached post.
- e) If dismissal is decided upon then it will normally be with the notice period as appropriate under the terms and conditions of service or statute, whichever is greater.
- f) A letter will be sent to the teacher by the Staff Dismissal Committee within 5 working days (or 7 consecutive days out of term time) of the formal interview, recording the main points discussed at the meeting and confirming the decision. Where dismissal is decided or action short of dismissal, the letter will include notification of the right of appeal against that decision.

For Borough Council HR Services Customer Schools Only – If a HR Adviser from Southend-on-Sea Borough Council is supporting the Governor Panel at the hearing they will liaise with SECAT to ensure that the dismissal letter is issued by the Local Authority to the employee. The dismissal decision takes immediate effect from the date of the Local Authority letter.

- g) Any appeal against dismissal or action short of dismissal must be made within 5 working days (or 7 consecutive days out of term time) of receipt of the letter from the Staff Dismissal Committee and should be sent to the Clerk to SECAT, specifying the grounds for appeal. Governors/trustees who were part of the Staff Dismissal Committee may not hear the appeal against the decision of that Committee.

5. Appeal Hearing

There will be no further right of Appeal except where the Staff Appeal Committee decides at Appeal that there should be a dismissal when a lesser sanction was originally given.

Appendix 1

Staff Dismissal Committee Decision Meeting Procedure and Appeal Hearing Procedure against a decision by the Staff Dismissal Committee at a Decision Meeting

The employee appearing at a Decision Meeting or an appellant appearing at an appeal hearing shall be given notice, in writing, at least 10 working days (or 14 consecutive days out of term time) in advance of the date, time and place of the hearing, and shall be allowed to be accompanied by a trade union representative, or work colleague. They shall be allowed to call witnesses and present documentation relevant to their case. A Staff Appeal Committee appeal hearing will be a re-hearing of the Staff Dismissal Committee's Decision Meeting.

Process

- 1. The Chair of the Committee should introduce all parties, confirm they have all received the appropriate paperwork and explain the purpose of the hearing. In an appeal hearing they will also confirm the grounds of appeal with the teacher and their representative (if any)*
- 2. The presenting officer will present the management case in the presence of the teacher and their representative (if any) and the panel.*
- 3. The other parties may ask questions of the presenting officer in the following order: teacher and/or representative, Committee members, HR Adviser.*
- 4. The presenting officer may then call witnesses who can be questioned in the following order: presenting officer, teacher and/or representative, Committee members, HR Adviser.*
- 5. The presentation is then reversed, with the teacher and/or representative having the chance to put their case and call witnesses.*
- 6. Questions may be asked on this presentation by the presenting officer, followed by Committee members and the HR Adviser.*
- 7. The teacher and/or representative may then call witnesses who can be questioned in the following order: teacher and/or representative, presenting officer, Committee members, HR Adviser.*
- 8. The Presenting Officer, followed by the teacher /representative, will have the opportunity to sum up their cases, if they so wish.*
- 9. Both parties will withdraw, leaving the Staff Appeal Committee to deliberate, accompanied by the HR Adviser.*

If recall is necessary to clear points of uncertainty both parties will return, notwithstanding that only one may be concerned with the point giving rise to doubt. In addition, the Committee may require that other witnesses/evidence should be called or produced in order to ensure that all necessary facts are considered before making a decision. The Committee may decide to adjourn the hearing to allow for this if necessary.

If a decision can be made within a reasonable time of the parties withdrawing, both parties should be recalled and informed of the Committee's decision. In all cases, and whether or not the decision has been given verbally at the end of the hearing, the employee will be sent a letter, outlining the reasons for the decision, within 5 working days (or 7 consecutive days out of term time) of the hearing.

PART 2: Associate Staff Capability Policy

1. Introduction

SECAT is committed to providing the highest quality service to pupils and the public. In order to do this, it is dependent on its workforce to perform effectively at all times.

Most employees are competent, effective and are able to develop through the range of opportunities offered by SECAT. There are, however, occasions when a significant gap may develop between the requirements of the job and an employee's performance and, if left unchecked, the situation may threaten the success of SECAT.

This policy is designed to help and encourage associate employees whose performance falls below the level required to achieve and maintain the standard of job performance expected by SECAT. When issues of capability arise where substandard performance relates to a lack of the required knowledge, skills or ability rather than misconduct, the employee should, wherever practicable, be assisted through training or coaching and given reasonable time to achieve the required standard.

The purpose of this policy is to:

- Secure the required improvement in cases where performance falls short of that expected of a member of staff in a particular post or grade
- Help poorly performing staff to become more effective
- Provide a fair and effective means of securing redeployment to a more appropriate position or where this is not practicable, dismissal.

2. Legislative background

An employer who is contemplating dismissing an employee has to adhere to the provisions on the statutory dismissal and disciplinary procedure introduced by the **Employment Act 2002** and **Employment Act 2002 (Dispute Resolution) Regulations 2004**.

The **Employment Rights Act 1996** provides that 'capability' is a potentially fair reason for dismissal where the reason relates to "... the capability or qualifications of the employee for performing the work of the kind which he was employed to do".

The **Disability Discrimination Act 1995** protects employees from unfavourable treatment relating to disability.

3. Delegated authority

Formal meetings under this policy and procedure should be chaired by the relevant Headteacher or a senior manager with delegated powers who will have authority to terminate the Contract of Employment. Where the relevant Headteacher has undertaken other stages of the process with the employee, the meeting or hearing shall be undertaken by an appropriate Local Governing Body Panel.

Appeals against termination of contract will be heard by an appropriate Local Governing Body Panel.

All other stages of the process should be undertaken by a Manager of the relevant SECAT Academy under delegated authority from the appropriate Headteacher, or by the CEO.

4. **Definition**

Concerns about capability may arise from a number of factors including:

- Lack of proficiency and poor overall organisation
- Changes in the nature and allocation of work, including heavy workload
- Lack of aptitude, skill or experience
- Personal/family difficulties
- Short-term health problems
- Reorganisation or redefinition of role
- Poor attendance at work, related to general ill-health
- Absence of facilities crucial to the employee's performance.

Where circumstances suggest there is a mix of issues e.g. lack of capability and misconduct, the procedure appropriate to the principle reason for action should be used.

Capability procedure

The capability procedure will be used where any deficiencies in performance on the part of the employee arise from a lack of aptitude, skill or knowledge rather than any wilful or negligent failure to carry out duties

Disciplinary procedure

The disciplinary procedure will be used where behaviour, conduct or performance falls short of the required standard and it is suspected that this is wilful or deliberate on the part of the employee.

Managing Sickness absence procedure

Issues where health and/or disability are a significant element of the capability concerns will normally be addressed using the managing sickness absence procedure.

If, however, circumstances dictate that the capability procedure is the most appropriate then the situation should be handled with sensitivity and according to the legislative requirements current at the time.

5. **Principles**

Managing performance of employees is crucial to the effectiveness of SECAT. Where an employee's ability to perform the duties of their post is in question, it is the responsibility of the relevant line manager to discuss the matter constructively to address the problem. The following principles will apply:

- Managers must be able to demonstrate that they have given the employee a fair and reasonable opportunity to reach the required standards. Appropriate stages of the capability procedure must be followed and exhausted.
- Support and/or training to enable employees to achieve the required standards of performance will be provided.
- No formal action will be taken against an employee until the cause of the poor performance has been fully discussed and the employee has been given the opportunity to offer an explanation as to why their standards of performance are unsatisfactory.
- Employees will be encouraged to contribute to the drawing up of a written action plan with their manager and Human Resources where standards of performance are not being met.
- The improvement plan will include timescales by which to achieve the required performance or steps towards achieving the required standard, together with a review period(s) and agreed system for monitoring progress.
- Employees who fail to improve their standard of performance may be subject to formal action being taken based on their lack of capability to do their job.

6. Responsibilities

Responsibility of the manager

It is the responsibility of all managers to ensure that they provide an environment in which employees can achieve the standards required of them. This would include ensuring that the standards are explicit, realistic and measurable in terms of what has to be achieved within the required timeframe.

Line managers have a responsibility to ensure:

- The employee is inducted into the organisation
- The employee receives initial and ongoing training
- The appropriateness of the job content is applicable to the grade
- The volume of work is reasonable
- Adequate advice and supervision is available
- The expectation of work performance is realistic

Line managers must consider that health could be an important factor in an individual's performance and must ensure that employees are supported by the appropriate process.

Other matters outside of work may contribute to poor performance and must be dealt with on an individual basis. Employees should be encouraged to raise any such issues with their line manager or their union as soon as possible.

Responsibility of the employee

All employees have a responsibility to achieve the required standard and co-operate with their line managers in complying with the agreed action plans.

Employees have a responsibility to ensure that they:

- Know the standard of work expected of them and seek clarification if unsure
- Make their line manager aware of any problems they have with their work
- Participate fully in the performance management scheme
- Undertake any additional training recommended by their line manager and other development opportunities appropriate to their role
- Participate in managerial supervision as appropriate.

7. Setting standards of performance

Employees have a contractual responsibility to achieve a satisfactory level of performance and should be given help and encouragement to reach it.

The following principles should be observed when an employee starts in their post:

- The standards of work required should be explained and employees left in no doubt as to what is expected of them. Attention should be paid to ensure that standards are understood by all employees.
- Job descriptions should accurately convey the main purpose and scope of each job and the tasks involved
- The consequences of any failure to meet the required standards should be explained
- Where an employee is promoted within a SECAT Academy the consequences of failing to make the grade in the new job, after a probationary period if appropriate, should be explained.

8. Recruitment and promotion

In order to minimise capability issues, recruitment procedures should be adopted which, as far as possible, ensure the appointment of employees with the necessary skills to do the job for which they are to be employed or have the potential to acquire such skills.

The following principles will assist in establishing the requirements of the appointment:

- The advertisement should make clear the nature and purpose of the job
- Job profiles need to convey accurately the main purpose and scope of the job and the tasks involved
- Person specifications should define clearly the type of experience, skills, competencies and abilities required
- The standard of work required should be explained and every effort should be made to ensure that these standards are made clear and understood by all applicants
- Where an employee is promoted, the competencies, aspects and differences in the job need to be made clear e.g. supervisory/managerial responsibilities where their previous post did not require this
- If necessary, at an appropriate stage, the consequences of failure to achieve/maintain standards will need to be explained.

9. Identifying poor performance

Poor performance can take many forms. This list is not exhaustive but merely intended to illustrate a few instances when the procedure may be used:

- Persistent failure to meet agreed objectives including meeting deadlines
- Persistent errors and/or omissions in completing necessary work
- Failure to meet the requirements of the post as set out in the job description
- Failure to adapt to changed working procedures.

Levels of performance can be identified through a number of possible standards and/or appraisals such as:

- Written, measurable standards set by the manager
- Job description/person specification and competencies
- Comparison indicators (e.g. other job holders)
- Professional codes of practice guidelines
- Grading criteria/expectation of the grade
- Feedback reports from supervisors'/team leaders.

10. Qualifications

Where an employee no longer has the correct qualifications to continue to perform their duties, the relevant manager should consider whether adjustments can be made to the existing duties so that employment can continue. Where the qualification in question is fundamental to the employee's duties and they cannot continue without them, the manager should consider whether the employee can be moved to another position. The manager should also give consideration to whether the employee can be returned to their original duties once the qualifications have been regained.

11. Ill-health/poor attendance

An employee's capability to carry out their role to the expected standard may be affected by their health and their attendance record. Managers must bear in mind the provisions of the Equality Act 2010 (Disability) Regulations, in particular the obligation to make reasonable adjustments when dealing with disabled employees.

12. Training

If it becomes clear that the reason for an employee's poor job performance is lack of knowledge or skill, the relevant manager should take positive steps to assess the employee's specific training needs and to meet these by providing formal training, coaching or supervisory guidance.

This will be particularly important where:

- The employee has recently joined the Academy within SECAT
- The employee has been transferred to a different job or promoted
- The employee's job has changed
- New technology has been introduced
- Work methods have changed or new work methods have been introduced.

It is important to bear in mind that individual employees' needs vary. While one employee may cope well and adapt quickly to new job duties or new methods of work, another may require more extensive training and coaching before they can perform to a satisfactory standard.

Scope

- Where this policy refers to managers, such actions should be carried out by the relevant Headteacher. Where this policy refers to Chief Officers, such actions should be carried out by the Local Governing Body and responsibilities of the Chief Executive will be undertaken by the Chair of Governors, unless otherwise delegated within the Academy.
- In educational establishments with fully delegated budgets, it is for the relevant Local Governing Body to decide whether or not it is appropriate to apply this policy to Support Staff (non-teacher staff). Where it is decided that it is not appropriate, the Local Governing Body is reminded of its obligation as an employer to nevertheless satisfy the requirements of the law and, where appropriate, the requirements of specific conditions of service.

Delegation

- Formal meetings under the Dismissal Procedure and Disciplinary hearings should be chaired by the relevant Headteacher or a senior manager with delegated powers who will have authority to terminate the Contract of Employment.
- All other stages of the process should be undertaken by a Manager of the Academy under delegated authority from the Headteacher, or by the Headteacher. Where the Headteacher is themselves the subject of the process then the process shall be undertaken by an appropriate Governor.

Part 2: Capability procedure for Associate Staff

1. Introduction

The purpose of this procedure is to provide a process for dealing with those situations where there are unacceptable performance standards as defined in the capability policy, to encourage the employee to achieve and maintain a satisfactory standard of performance. It is intended to deal with those cases where, despite normal management support, the employee remains lacking in some area of ability, skill, competence or knowledge and is consequently unable to carry out the required duties to an acceptable standard.

The procedure provides an opportunity for:

- Encouragement, support and assistance
- A structured and clear path for improvement
- Discussion and consideration of all the relevant factors
- The manager and employee to work together
- Employee representation.

Managers should discuss the situation with the Academy's HR Services provider before any action under the formal capability procedure is taken. Support will be provided by HR who will provide all the required documentation, including sample letters, to ensure that the process is carried out with equal consistency throughout SECAT.

2. Informal stage

Except in the most serious cases the informal procedure will be used to address issues before commencing the formal procedure. The line manager must decide how to bring the performance issues to the attention of the employee. It may be done early through a special meeting or as part of normal supervision sessions. It should be brought to the employee's attention as soon as reasonably practicable. Advice is available from the relevant HR Services provider, who will provide a sample letter if required.

At the meeting the line manager should:

- i. Explain the nature of the concerns
- ii. Explain that their performance will be managed under the informal capability process
- iii. Allow the employee the opportunity to respond
- iv. Discuss the situation with the employee. If the employee is lacking in particular skills, advice and/or training will be given, as appropriate, to help enable the employee to reach the required standards. Additional supervision for a specified period may also be offered
- v. Set out clear standards of performance that the employee must attain
- vi. Identify activities and support measures to effect the improvement
- vii. Set a review period at the end of which a progress meeting will be held with the employee
- viii. Identify all necessary training and supervision to be provided to assist in effecting the improvement
- ix. Agree an appropriate method of monitoring progress
- x. Keep written records of the meetings and agreed actions.

If at this point the inadequate performance is identified as arising from an ill-health/disability related matter, the issue may be referred to occupational health on the advice of the relevant HR Services Adviser. Where appropriate the occupational health diagnosis will form the basis for an agreed action plan designed to support the employee whilst affected by their condition. Where an employee has a disability any reasonable adjustments to the job will form part of the agreed action plan in order to assist the employee to perform to the best of their abilities. If the inadequate performance is as the result of harassment, bullying or stress then action recommended in the relevant policy should be followed.

If at the end of the review period, the employee's performance has met the required standard the employee should be informed that no further action will be taken but if this improvement is not sustained during a 12-month period the capability procedure will recommence at this informal stage.

If the employee's performance does not improve to the required standard normally within two months of the matter being identified with them, the line manager in conjunction with Human Resources will decide whether to advance to the formal stage of the procedure. At the line manager's discretion this time period may be either reduced to one month or extended up to four months depending on the nature of the poor performance but **these minimum and maximum time periods should be adhered to unless there are exceptional circumstances.**

3. Formal stage

When formal capability action may be necessary to improve an employee's performance to the required standard, there are a number of factors that must be considered.

- (i) The line manager must be able to identify the standard of performance expected and the measures of performance that are applicable. Such standards must be set according to the following principles:
 - Specific - they are well defined
 - Measurable - both quantitatively and qualitatively
 - Achievable - they are not set too high
 - Resourced - the resources necessary are readily available
 - Timed - the timescales set are reasonable
- (ii) The line manager must be able to demonstrate that the employee knows the standards of performance and that counselling/coaching has already taken place
- (iii) The line manager must refer their concerns to their own line manager who will be responsible for conducting the formal capability reviews at stage 2.

Where a manager has considered an appeal against an earlier action, that manager must not conduct a future formal review with the same employee in order to maintain impartiality.

A letter will be sent by the manager to the employee at least 5 working days before any formal review meeting. The letter should outline the issues to be discussed. Employees may be accompanied by a fellow worker or trade union official at any formal meetings that are held to discuss a failure to meet the required standard of performance. The employee will be notified of the outcome of all review meetings held under the formal capability procedure within 5 working days of the date of the meeting.

The employee should be made aware that continued failure to reach the required level of performance may result in dismissal.

Stage 1 - Formal capability review – first assessment

Purpose

Where work performance remains unsatisfactory following counselling/coaching a formal capability review meeting should take place between the employee, their line manager and an HR Adviser. The purpose of the meeting is to ensure improvement to the standards required for the role.

In order to move to the first stage of the formal review it is important to ensure that the following points have been included during the informal stage:

- Regular feedback on general performance has been provided, normally this will be done during general supervision
- The employee understands the expectations of their role as described in the job description
- Where shortcomings have been raised, deadlines have been set and not met to expected standards
- Sufficient notes have been made to support the above and shared with the employee
- In using the informal stage, a reasonable timeframe has been applied and the employee informed of this. This timeframe will depend on the complexity of the issues of concern.

Capability meeting (first assessment)

Having identified specific areas of incapability a meeting will be arranged between the line manager and employee. This meeting will also be attended by a HR Adviser who will provide guidance and assistance if required.

The purpose of this meeting is to:

- Give the employee the opportunity to explain their reasons for the problems identified
- Discuss opportunities for additional training, supervision or other work experience
- Explain the capability process to the employee i.e. that whilst reviews and timescales will be set according to their individual circumstances the procedure may ultimately result in redeployment or dismissal where the required performance is not forthcoming
- Agree an action plan.

The action plan should identify the following:

- The standard of performance to be achieved in the post by the employee
- The current level of actual performance
- The level of support the employee should expect from their line manager
- Additional training and development the employee can expect
- The timescales in which stepped improvements between actual and standard performance are expected
- The frequency of review meetings between the employee and line manager – this will usually be weekly update meetings with the line manager and monthly reviews which may include the HR Adviser
- The standard of performance to be achieved throughout the action plan
- The consequences of failing to meet the targets set
- The timing of the next formal review meeting.

If the employee expresses the view during this meeting that the job is not suitable for their capabilities, then redeployment will be considered.

Follow up action / meeting

At the end of each interim review period the manager conducting the capability meeting will re-convene the parties to assess improvements achieved against the action plan. If standards are being achieved the line manager will notify the employee and keep progress under review. Where the review period ends and the employee has achieved the standards of performance required as set out in the action plan they should be notified that should their performance deteriorate within a twelve-month period the capability procedure will be re-invoked from stage 1 of the formal procedure.

If standards are not being achieved the line manager will decide whether to continue to review under stage 1 of the procedure or proceed to stage 2. The manager should consult the HR Adviser with regard to the most suitable action to take in the circumstances.

Stage 2 – Formal capability review – second assessment

Purpose

Where reviews of performance under stage 1 of the formal procedure fail to identify an improved and sustained level of performance a further review should be arranged. This review should be attended by the employee, line manager and HR Adviser. The employee should be informed of the date of the review meeting in writing and 5 working days' notice should be given.

Capability meeting (second assessment)

This meeting will consider the action plan provided following the stage 1 review and any subsequent reports of progress. The meeting will also consider the steps taken to support the employee to achieve the required level of performance.

Where reviews carried out during the redeployment procedure indicate that the employee is unsuitable for the alternative post redeployment to another post may be considered.

At this meeting the employee should be reminded that the possibility of dismissal will remain if the level of performance does not improve to the required standard or a suitable post is unavailable or options for redeployment are unacceptable to the manager or employee.

Follow up action for extended reviews

If an extended review period has been set the group manager will re-convene the parties to assess improvements achieved against the action plan. If standards are being achieved the manager will notify the employee and keep progress under review. Where the review period ends and the employee has achieved the standards of performance required as set out in the action plan they should be notified that should their performance deteriorate within a twelve-month period the capability procedure will be re-invoked from stage 2 of the formal procedure.

If standards are not being achieved the manager will decide whether to continue to review under stage 2 of the procedure or proceed to stage 3. The manager should consult the HR Adviser with regard to the most suitable action to take in the circumstances.

Stage 3 - Contractual review

Where standards of performance have not been achieved as set out in the action plan or where redeployment has been unsuccessful a contractual review will be undertaken where dismissal will be considered. The employee should be given 10 working days' notice of the meeting and be supplied with a copy of the documents to be presented.

The contractual review will be conducted by the Headteacher or, if they have acted as the Manager in the case, by a panel of Governors and will be attended by the line manager, HR Adviser and the employee. As at all stages of the formal procedure, the employee may be accompanied by a work colleague or trades union official.

The review will consider whether any progress has been made on the action plan and subsequent reports of progress. Where partial improvement has taken place assessment must be made as to whether a further period of review would provide the employee with the opportunity to meet the standards required.

The relevant Headteacher or panel of Governors will review the history of the case including the steps that have been taken to support the employee to achieve the required level of performance. The employee's explanation including any mitigation will be heard and considered. They will then take the decision to either dismiss the employee on the grounds of their lack of capability or to extend their final review to allow further time for improvement and maintenance of any improvement. Where all options have been explored the employee may be dismissed on the grounds of their lack of capability. At this stage the relevant Headteacher or panel of Governors may recommend a search for alternative employment if this has not been considered before. The search may run at the same time as the notice period. If alternative employment is unsuccessful their employment will be terminated on the grounds of capability.

Dismissal

Where dismissal is considered action should be taken in accordance with SECAT's dismissal procedure. In particular, SECAT's legal obligations under the Employment Act (Dispute Resolution) Regulations 2004 must be adhered to.

The decision to dismiss must be confirmed in writing to the employee within 5 working days and must advise the employee that they have the right to appeal within 10 working days of receipt of the letter.

4. Redeployment

Redeployment within SECAT will be considered prior to any dismissal although an employee does not have a right to be redeployed to a particular post. The opportunity for redeployment will depend on whether there is a suitable vacancy at SECAT and there will be no salary protection.

Redeployment will be subject to two months' review to ensure acceptable performance within the new post. Where the review indicates unsuitability for the post the conductor of the original contractual review (the Headteacher or panel of Governors) will consider the case again, including further redeployment if possible, or dismissal on the grounds of lack of capability.

5. Right of Appeal

An employee may appeal against decisions made at the formal stages of the procedure and against dismissal on the grounds of lack of capability. The appeal must be made in writing to the Chair of Governors, stating the basis for the appeal. If the original decision was made by a panel of Governors, then the appeal will be conducted by another panel of Governors.

The employee will be advised in writing of the date for the appeal to be heard, and that they may be accompanied by a trade union representative or work colleague. The employee will be given 15 working days' notice of the meeting.

The appeal process will be carried out in accordance with the appeals procedure set out in SECAT's dismissal procedure.