Schools Support Staff Capability Policy 2026/27

Mayesbrook Park School
Alternative Provision for young people in Barking and Dagenham

Written by:	**London Borough of Barking & Dagenham**	**Approved by: Cathy Stygal**
Date:	**23/09/2026**	**Last reviewed on: 23/09/2026**
Next review:	**01/09/2027**	

Contents

Introduction.....3
General.....4
Roles and Responsibilities.....5
Performance Process.....6

Introduction

Council Policy for School-Based Staff

The Council and Schools are committed to providing a working environment where individuals are treated with fairness, dignity and respect. This procedure is designed to ensure that there are fair and objective arrangements for dealing with performance issues in the workplace.

There is a need for guidance to Governing Bodies and Head Teachers on a range of issues. One of these is a procedure for managing performance to all support staff in Schools. This procedure is offered to Governing Bodies and Head Teachers as an example of good practice for adoption across the borough.

Uniform use of the procedure will ensure fair and equitable treatment for all staff. The procedure has been agreed with the Local Representatives of the Non-Teachers' Trade Unions. Adoption and operation of this procedure should ensure that the Governing Body and the Headteacher operate in accordance with the following provisions:

- Employment Protection (Consolidation) Act 1978 and other relevant employment legislation including the Employment Rights Act 1996 and the Employment Relations Act 1999.
- Conditions of Service for Support Staff in England and Wales (Green Book)
- Conditions of Service issued to various school staff at the time of their employment and the letters which confirm their contract of employment
- The Education Act 2002 (Section 35 (8) and Section 36 (8))
- The School Staffing (England) Regulations 2009
- ACAS statutory Code of Practice for Disciplinary and Grievance Procedures
- ACAS guidance on how to manage performance (effective from April 2010).

In order to avoid unfair treatment or discrimination, Governing Bodies, and Head Teachers should seek the advice and assistance of Human Resources at all stages in the operation of these procedures. In any event the Director of Children's Services or representative is entitled to attend all the meetings of the Governing Body's Disciplinary and Appeals Committee.

Adoption of these procedures will ensure that the Governing Body will have the full support of the Local Authority in progressing cases.

If a Governing Body chooses to adopt alternative procedures, then a copy of those procedures, together with the reasons for their adoption, should be sent to the Director of Children's Services who will advise the Secretaries of the Professional Associations.

Governors must ensure that the adopted procedures are readily available to and understood by all members of staff.

The Procedure should be viewed primarily as a way of helping and encouraging employees to improve unsatisfactory performance. It is intended to ensure that performance issues are dealt with promptly, fairly, and consistently in accordance with the Council's and schools' policies, employment legislation and "Best Practice."

General

Advice and support

Human Resources will support and advise Head Teachers and Governors dealing with performance issues and monitor all formal cases to ensure that they are dealt with in accordance with the Procedure, employment and equalities legislation, and “best practice”.

Employees are entitled to be accompanied by a trade union representative or a fellow work colleague at any meetings under the “Formal Process.” (see Representation).

Representation

Employees may only be accompanied / represented at meetings during the formal process by a work colleague **or** a trade union official.

It is the employee’s responsibility to arrange their representation and to inform their representative of the arrangements (time and dates) of meetings.

There may on some occasions be a need for an employee to require the extra support of a family member. This will be determined by a case-by-case basis with the support of HR.

Confidentiality

In the interests of natural justice and to avoid prejudicing the outcome of any performance process, the proceedings must be kept strictly confidential. All those involved in the process will be required to maintain confidentiality at all times and must not discuss or disclose details of the issues or the outcome of meetings, etc.

Headteacher’s and Governors involved in the various stages in this procedure are advised that under no circumstances whatsoever should they discuss the case with any other party or amongst themselves. Failure to observe this instruction could well result in the case being dismissed on procedural grounds. This matter is of particular relevance because certain members of the Governing Body may at a later stage have to act as an appeal body and natural justice demands that they must have no prior knowledge of the case whatsoever.

Fairness and objectivity

It is important to make sure that the performance review process is conducted in a fair and unbiased manner.

Advice must be sought from Human Resources where there are concerns as to impartiality or the process being followed.

Unsatisfactory performance

Unsatisfactory work performance is that which falls below the expected standards or requirements, (but it is not wilful misconduct which should be dealt with under the Disciplinary Procedure); examples may include:

- not working as fast as required or producing enough work
- producing unsatisfactory quality of work or making mistakes
- not understanding or following instructions
- not adapting when ways of working change
- not being able to work in line with agreed procedures
- not performing as well as colleagues in comparable jobs

Records

The ACAS Code of Practice recommends that records should be kept of meetings detailing the following:

- the nature of any unsatisfactory performance;
- the employee's defence or mitigation;
- action taken and the reasons for it;
- whether an appeal was lodged and its outcome; and
- any subsequent developments

Records should be confidential and kept in accordance with the requirements of the Procedure and the Data Protection Act 1998. The employee should receive copies of any meeting records.

Monitoring
The application of the Procedure will be monitored closely and reviewed in consultation with management and the trade unions.

Roles and Responsibilities

Employee's responsibility
The Council, Head teachers/Governors as part of the normal employment contract, expects the following from its employees: -

- good timekeeping (including punctuality and attendance);
- good standards of work (including quality and quantity);
- compliance with reasonable orders, instructions, requirements, and observance of Council practices, policies and procedures.

Employees must comply with arrangements detailed in this Procedure which are designed to ensure that performance issues are dealt with fairly and objectively. Employees are required to:

- fully co-operate with the process
- maintain confidentiality
- attend meetings at the time and place designated
- attend training and take part in staff development as and when required
- Give as much notice as possible when they or their representative cannot attend formal meetings and be reasonable when suggesting alternatives, (which must be within five working days of the original date)

Head Teachers /Manager's responsibility
Head Teachers and those responsible for managing staff are encouraged to have in place mechanisms to review performance and support on a regular basis. Managers must ensure that their employees are made aware of the standards expected and that:

- Employees understand their roles and have up-to-date job descriptions
- Employees are set clear, fair, realistic and measurable targets
- Employees have annual performance meetings
- Employees are provided with support and training as agreed, through regular monthly supervision / 1-1 meetings.
- Changes in individual workloads and performance targets are reviewed regularly in supervision and 1:1 meetings
- New employees (including internal transfers) have structured induction and are made aware of the standard of performance expected
- Appropriate reasonable adjustments are made for disabled employees

Head Teachers/Managers should comply with arrangements detailed in this Procedure which are designed to ensure that performance issues are dealt with fairly and objectively. Head Teachers/Managers are required to:

- Notify the employee of any concerns about unsatisfactory performance
- Maintain confidentiality

- Try and resolve performance issues as they arise informally with the employee through informal discussion and advice
- Where performance issues cannot be resolved informally, give the employee reasonable opportunity, with appropriate support, to reach the required standard
- Consult Human Resources before proceeding to the formal stages of the Procedure **Employee Supervision**

Performance issues should be raised and investigated by the employee's immediate supervisor/manager as part of the normal supervision / "1-1's", and the appraisal process if your school has one in place. This includes identifying with the employee any training needs and/or issues that may affect the individual's performance.

Performance Reviews
Performance Reviews will be conducted by a nominated person with the authority to chair a disciplinary hearing and to issue any disciplinary sanctions e.g., issue warnings or dismissal. The appeal will be heard by a Governing Body Panel.

Capability Hearings
Hearings will be conducted by the Headteacher/Sub Committee Panel with the authority to issue any disciplinary hearings.

Human Resources
Procedural advice must always be sought from Human Resources. A Human Resources Adviser will attend all formal Performance Reviews, Capability Hearings and Appeals to ensure a thorough and fair process for all concerned in line with the Council/Schools procedures and "Best Practice."

Human Resources will be available to give appropriate support and advice during the process; this will include: -

- talking through the process to be followed
- where to go for further help and support

Chair of Governors
The Chair of Governors and his/her named representative, has the overriding authority to ensure that all performance cases are dealt with appropriately and in accordance with this Procedure, employment legislation and "Best Practice."

Performance Process

It is essential that any concerns in relation to the employee's performance are raised with the individual as soon as possible; this will normally be done through the regular e.g., monthly supervision and must not be left to the annual appraisal if your school operates one. In accordance with the principles of natural justice, employees will be advised at each stage, by their manager or the Reviewing Officer, of the precise nature of the complaints about their performance and given the opportunity to respond before any decision is made. The individual will also have the right of appeal against any disciplinary action taken after a Review or Hearing. No disciplinary action will be taken until the matter has been investigated and the employees given a further/final opportunity at the Performance Review, to meet and maintain the required performance standards.

Performance management – informal
The intention is to try and resolve performance issues informally where possible and help the employee to reach and maintain the required standards. It is important to understand why someone is not performing their duties at the standards required and whether there are any underlying reason(s) e.g., has the role

changed or do they have health or other problems. Managers must ensure that they have made the employee aware of the required standards and that:

- the employee understands their role and has an up-to-date job description or agreed list of duties;
- the employee has been set clear, fair and realistic targets;
- the employee has had annual appraisals, six monthly reviews, and regular supervision / 1-1 meetings if your school has them
- any support and training agreed has been provided,
- reasonable adjustments are made for disabled employees;
- the employee has been made aware of any concerns and given a reasonable opportunity to reach the required standard

The employee should be kept informed of the nature of the poor performance, the level of improvement required and the time limit for achieving this. They should also be made aware of the possible outcomes if they fail to achieve and maintain the required standards i.e., so this will not be a surprise to them.

Where the employee is still failing to achieve and maintain the required standards, the manager will arrange a formal Performance Review.

Performance Review (Stage 1)
Managers must consult Human Resources and provide evidence of either an appraisal having being conducted that year (if you have a system in place and/*or* the performance issues raised with the employee including the support given before proceeding to a formal Performance Review.

The arrangements for the Performance Review are detailed at **Appendix 2**.

A Performance Review will be conducted by the Headteacher or nominated person (Reviewing Officer) with the authority to chair a disciplinary hearing and to issue sanctions; the Reviewing Officer should have experience of or be familiar with the employee's role. A Human Resources Adviser will provide procedural advice to the Reviewing Officer.

The Reviewing Officer conducting the meeting will arrange for a note taker to be present. (If the employee disagrees with the notes of the meeting, they can ask for their version to be attached to the minutes).
The management case should normally be presented by the employee's direct line manager who will arrange for the employee to be formally advised in writing of the date and arrangements for the Performance Review including:

- the specific details of their unsatisfactory performance;
- their right to be represented;
- their right to present evidence;
- copies of the evidence and names of any witnesses to be presented.

The employee or their representative is responsible for arranging: -

i) Their witnesses and notifying them of the time and date of the review
ii) Provision of their evidence/documentation to be presented at the review

Details of the information to be presented and the names of witnesses to be called should be made available to the Reviewing Officer, line managers and employee, a minimum of five working days (excluding school closures) before the day of the Review.

If the employee's chosen representative is unable to attend, the Performance Review will be rescheduled to a mutually convenient time no more than 5 working days (excluding school closures) after the date originally proposed. (This deadline may be extended by agreement provided the meeting is held within twenty working days (excluding school closures) of the originally notified date).

The employee will be notified in writing that if they fail to attend the re-arranged Performance Review without good reason, or to arrange representation, the case may be heard in their absence.

Outcome

When considering an outcome, the Reviewing Officer should consider the following:

- Has the employee been set clear, fair and measurable targets?
- Has the employee been made aware of the standards required and the issues concerning their performance?
- Has any training and support agreed by the manager being provided or appropriate reasonable adjustments made for disabled employees?
- Have sufficient regard to any explanation put forward by or on behalf of the employee been considered.
- Do I genuinely believe that the employee is not performing to the required standards? If the answer to all of the above points is yes;
- Are the issues serious enough to warrant the decision I am contemplating?
- Have I had regard to any mitigating circumstances put forward by, or on behalf of, the employee and a response by management?
- Is the decision reasonable in all the circumstances (considering the individual's service history and the action taken in similar cases)?

After full consideration of the evidence presented, the Reviewing Officer may decide from the following outcomes:

Adjournment

To adjourn pending further consideration/ investigation of issues raised at the Review before reconvening to decide on the outcome or to continue the Review.

No Action

Where there is no case to answer or the matter does not warrant a warning, the employee should be informed that the matter is being dropped and that no further action will be taken. The outcome and any recommendations must be confirmed to the employee in writing and the records and documentation from the investigation will be destroyed.

Written / Final warning

The Reviewing Officer should ensure that the employee is clear about the reasons for the warning, and the consequences of failure to meet and maintain the required performance. The letter will set out the:

- details of the unsatisfactory work performance
- employee's explanation of the performance issues
- performance improvement plan and monitoring arrangements
- arrangements for any support and training during the Review Period
- timescale for the Review Period

The duration of the Review Period will depend on the circumstances of each case and is normally 3 months, starting from the date of the letter notifying the employee of the outcome.

Note*: Managers must ensure that any support agreed is provided as it will be unfair to progress the case through the Procedure if they themselves have not complied with the outcome.*

In all cases, the Reviewing Officer will notify the employee in writing of the outcome of the Review, including any recommendations, within 5 working days (excluding school closure periods), along with the right to appeal as appropriate.

Review Period

The line manager must continue to monitor the employee's performance during the Review Period and

ensure that any support and training agreed is provided.

Where at the end of the review period, the employee has achieved the required performance the line manager will confirm this in writing and advise them that:

- the level of improvement must be maintained for 12 months after which the Process will be considered concluded; and
- failure to maintain this may result in further formal action being taken.

A copy of the letter should be sent to the Human Resources to be placed on employee's personal file. Where at the end of the review period the employee is still failing to achieve and maintain the required standards the manager will arrange a Capability Hearing.

Capability Hearing (Stage 2)

The arrangements for the Capability Hearing follow the same process as for a Performance Review but will be conducted by a sub-committee panel.

The management case should normally be presented by the line manager or nominated person in that role who will arrange for the employee to be formally advised in writing of the date and arrangements for the Hearing:

Outcome

When considering an outcome, the Hearing Officer should consider the following:

- if the timetable for improvement was reasonable
- if the action plan was reasonable
- establish that adequate support and training has been given
- establish the reason(s) for continued below standard performance
- the employee's explanation of the circumstances of the case, together with any mitigating factors or supporting evidence

If the answer to all of the above points is yes;

- Are the issues serious enough to warrant the decision I am contemplating?
- Have I had regard to any mitigating circumstances put forward by, or on behalf of, the employee and a response by management?
- Is the decision reasonable in all the circumstances (talking into account the individual's service history and the action taken in similar cases)?

The Hearing Officer may decide from the following outcomes:

Adjournment/Extend Review Period

To adjourn pending further consideration/ investigation of issues raised at the Hearing before reconvening to decide on the outcome or to continue the Hearing.

No Action

Where there is no case to answer or the matter does not warrant a warning, the employee should be informed that the matter is being dropped and that no further action will be taken. The outcome and any recommendations must be confirmed to the employee in writing and the records and documentation from the investigation will be destroyed.

Dismissal

If it is considered that all agreed support mechanisms have been put in place, the Hearing Panel may decide to dismiss. Dismissal, with notice, will normally result when performance remains unsatisfactory despite an earlier warning.

In exceptional cases, as agreed by the panel i.e., where the employee has proven capable of performing duties in another post or at lower level, consideration may be given as to other vacant positions within that

service area as an alternative to dismissal during the notice period. The relegation may be to a different work area/job and payment will be commensurate with the grade of the new post. *Salary protection will not apply. In this situation, the line manager will assess any vacancies for suitable alternative employment during the notice period.*

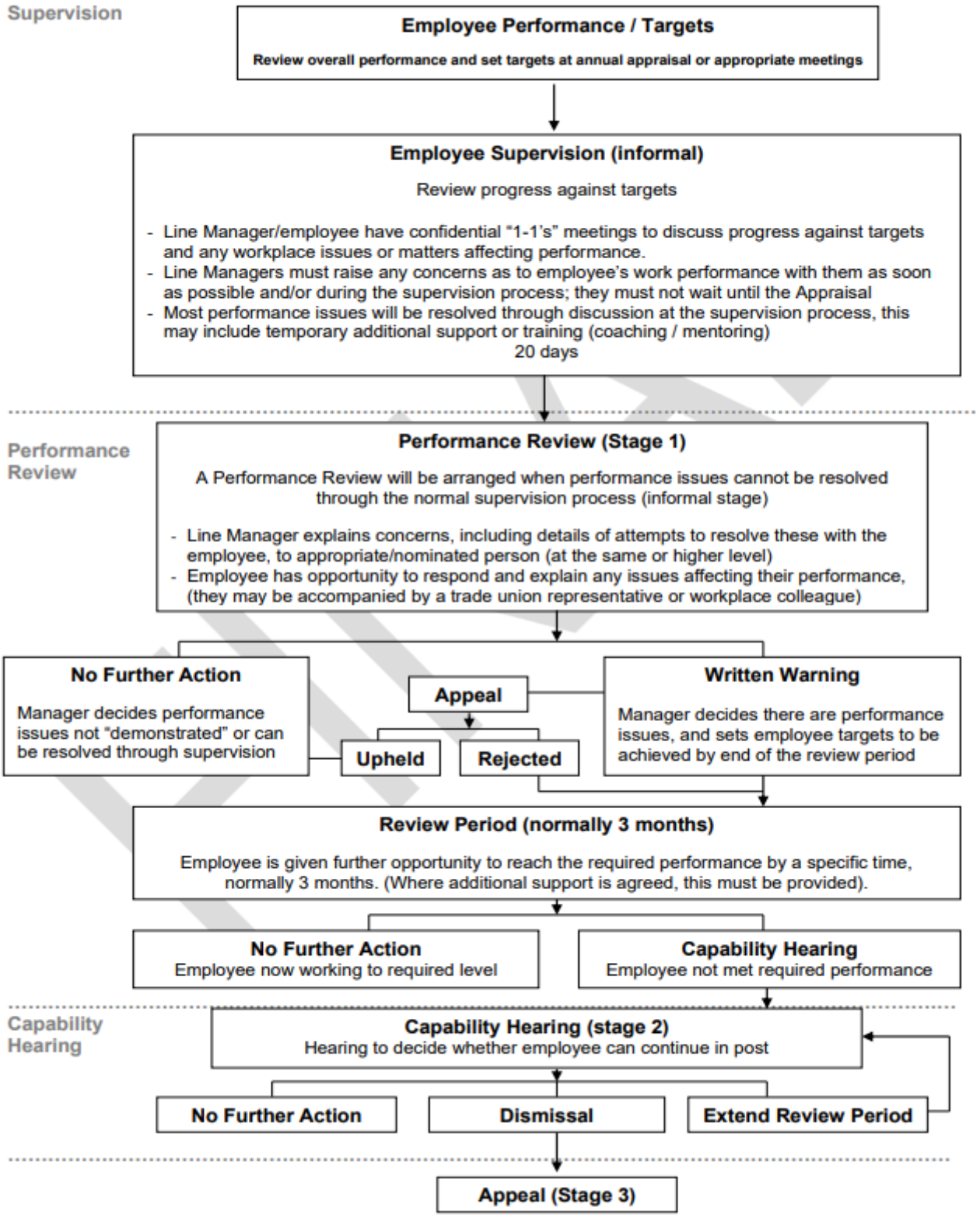
In all cases, the Hearing Officer will notify the employee in writing of the outcome of the Hearing, including any recommendations, within 5 working days, along with the right to appeal as appropriate.

Appeals (Stage 3)
Employees have the right to appeal against any action and if they wish to do so, they should write to the Appeals Panel within 10 working days (excluding school closures) of receiving the letter confirming the outcome of the Review or Hearing, stating the grounds for the appeal.

Appeals against written Warnings and dismissals with be heard by an appeals panel. The hearing panel may vary or confirm the decision made but cannot increase the sanction.

This is the final stage; there is no further right of appeal.
Human Resources will automatically update the Procedure to comply with any changes to legislation and / or ACAS guidance and notify employees and representatives of the amendments.

Appendix 1: Schools Support Staff Capability Policy



Appendix 2: Performance Review / Hearing Procedure

Introduction

- The person hearing the case at the Stage 1 or Stage 2 (the "Hearing Officer") will; clarify the roles of those present; check both sides have copies of the documentation and details of any witnesses to be presented; and outline the process to be followed.
- The Hearing Officer will not normally allow any further documentation or witnesses to be presented unless both sides agree.
- The manager presenting the case, the employee and their representative will be present throughout the Review/Hearing except for any adjournment and when the Hearing Officer is considering their decision.
- Witnesses will only be present when they are called to give their evidence and to be questioned by the Hearing Officer, the management and staff sides.
- The Hearing Officer and HR Adviser can ask questions of the manager, the employee and/or their representative and witnesses at any time.
- The Hearing Officer will give the employee the opportunity to say whether they admit to any of the allegations before management presents their case.

Where the employee admits to the performance issues, the Hearing Officer may consider claims of mitigation instead of having the whole case presented. The Hearing Officer will still allow management the opportunity to ask the employee or their representative questions. The employee and/or their representative will then have the opportunity to clarify any points raised during the questioning.

In such cases the Hearing would then go directly to **Point 4: Summaries**

Management case

- Management will present their case and call witnesses and refer to documents as appropriate
- After the presentation, the employee and/or their representative can ask the management questions
- Management will then have the opportunity to clarify any points raised during questioning.

Employee case

- The employee and/or their representative will present their case and call witnesses and refer to documents as appropriate.
- After the presentation, management can ask the employee and/or their representative questions.
- The employee and/or their representative will then have the opportunity to clarify any points raised during the questioning.

Summaries

- Both sides, starting with management, will have the opportunity to ***summarise*** their case if they wish. This is not a rehearing of the whole case and neither side will be allowed to ask any further questions.
- Both sides will then withdraw whilst the Hearing Officer considers their decision. If it is necessary to recall the employee, manager or a witness to clarify points of uncertainty as to the evidence presented, this must be done in the presence of both parties who will be called back together.

Outcome

- The Hearing Officer will recall both sides together to notify them of the outcome. If further time is needed to consider the matter, both sides will be recalled and given an indication as to when a decision is to be made and allowed to leave.
- The Hearing Officer will confirm the decision and any recommendation(s) in writing within 5 working days (excluding school closures) and arrange for the notes of the meeting to be issued to both parties and the Human Resources Adviser as soon as possible afterwards.