**Competency Procedure for Support Staff**

**1 INTRODUCTION**

1.1 The following procedures have been adopted by the governing board of Jakeman Nursery School to apply to any person employed to work at either school. 1.2 The procedures are distinct from the disciplinary procedures and from the rights of employees under the separate grievance procedure which the governing board has established in accordance with paragraphs 6(1) and (2) of Schedule 3 of the Education Reform Act 1988.

1.3 These procedures are subject to any arrangements made within an agreed national framework for the appraisal of teachers.

1.4 These procedures do not apply to probationary teachers whose competence will be assessed by the Local Authority in accordance with Schedule 6 of the Education (Teachers) Regulations 1989.

1.5 The procedures will be applied in accordance with the Instrument and Articles of Government of the school and in accordance with Section 10 of the Advisory, Conciliation and Arbitration Service’s Code of Practice No 1 ‘Disciplinary practice and procedures in employment’.

1.6 In these procedures:

- the ‘Local Education Authority’ or the ‘Authority’ means Birmingham City Council acting in its capacity as a Local Education Authority;

- references to the Chief Education Officer include any other officer designated by him;

- ‘employee’ means a person employed to work at the school.

Notes

(a) These procedures relate solely to lack of skills and/or aptitude. They do not extend to incapability or poor performance arising from ill health or from urgent personal circumstances that can be distinguished from the employee’s normal performance. Skills and aptitude enable the employee to perform satisfactorily given appropriate support, supervision and training.

(b) Although the Education Reform Act 1988 does not require a governing board to establish formal procedures specifically to deal with this aspect of capability, such procedures are very useful in improving the performance of employees who are experiencing difficulties and are therefore commended to governing bodies as good employment practice. Moreover, in an exceptional case of irredeemable incapability that had resulted in dismissal, the evidence arising from such procedures would be very useful to a governing board in defending its actions in an industrial tribunal.

(c) If an employer’s stated procedures are not followed, a claim for unfair dismissal is likely to be upheld by an industrial tribunal.

(d) Further guidance on dismissal is given in the relevant section of the Authority manual of guidance to schools with delegated budgets.

(e) All employees should have the right to inspect a copy of the procedures. A copy should be readily accessible in the school office. It is also helpful to display copies on notice boards in the school where employees meet together.

**2 INFORMAL DISCUSSIONS**

2.1 As part as their acknowledged management responsibilities, and as part of arrangements for supervision, support and training, head teachers may from time to time discuss aspects of skills and/or aptitude with an employee. Such discussions will take place on an informal basis and should not be constrained by, or come within, the scope of these procedures, nor shall counselling and advice given in this way count as warnings within the scope of these procedures.

2.2 However, the failure of the normal arrangements for maintaining or improving an employee’s skills and/or aptitude will be grounds for invoking these procedures.

2.3 If the head teacher feels that it is necessary to record informal discussions with an employee about aspects of competence, such a written record shall be in the form of an aide memoire and a copy of it shall be given to the employee concerned.

Notes

(a) Informal discussions should not be recorded on the employee’s personal file. Any aide memoire should be filed separately.

**3 INVESTIGATIONS**

3.1 Before any action is taken in respect of an employee in accordance with paragraph 4 of these procedures, the head teacher shall investigate fully the circumstances of the alleged lack of skills and/or aptitude. This investigation should seek to establish all the facts and collect relevant, supporting documents, including statements from witnesses where appropriate.

3.2 In particular, the head teacher must ascertain whether the poor performance is attributable to other factors. If this proves to be the case, no further action will be taken under these procedures. 3.3 If the investigation requires information from pupils the head teacher should follow the arrangements set out in the Authority’s procedures for dealing with the allegations of sexual assault made by pupils, regardless of the nature of the situation about which information is required.

3.4 Having gathered as many facts as possible the head teacher shall decide whether the facts

- do not warrant further action; or

- amount to a situation which should have been dealt with under the normal arrangements for staff supervision and support and for which such arrangements should now be made;

- warrant further action in accordance with paragraph 4 of these procedures.

3.5 Where an employee is on sick leave, the illness being unconnected with skills or aptitude, or is on other authorised absence, a meeting or hearing under these procedures shall not proceed during that absence unless the employee is able to attend or decides that his/her nominated representative can attend on his/her behalf.

Notes

(a) In addition to ascertaining the facts about alleged lack of skills and/or aptitude, a check should also be carried out on the school’s management role in relation to the normal arrangements for staff supervision and support.

**4. ARRANGEMENTS FOR HELPING EMPLOYEES IMPROVE THEIR COMPETENCE**

4.1 The head teacher shall draw the employee’s attention to the areas of concern and shall invite the employee to a meeting, at reasonable notice, at which the employee may be accompanied by a friend or representative of the employee’s choice. The purpose of such a meeting shall be

(a) to define those skills and/or area of aptitude which are a matter of concern;

(b) to allow the employee or the employee’s representative to express views and/or offer an explanation;

(c) to determine a programme of action designed to improve skills and/or aptitude; and

(d) to draw the employee’s attention to the existence of this document and to supply a copy of it.

Under (c) the head teacher may decide to arrange for direct supervision of the employee’s work for a specified period and in this event shall inform the employee of the nature and duration of such supervision.

4.3 After a period of not less than twelve and not more than twenty-four full working weeks a further meeting will be held to review progress, at which meeting the employee may be accompanied by a friend or representatives of the employee’s choice. The employee or the employee’s representative will again have the opportunity to comment upon his/her performance. At the meeting the head teacher shall either

(a) decide that performance has improved to the point where no further action is necessary; or

(b) extend or modify the programme of action designed to improve performance; or

(c) decide that the lack of skills and/or aptitude is serious enough to warrant a formal hearing in accordance with paragraph 5 below.

4.4 In the event of 4.3(b) above, the terms of paragraph 4.3 shall be repeated no more than twice at which point either 4.3(a) or 4.3(c) shall be the decision.

4.5 In the event of any warning under 5 below there shall follow a period of not less than twelve full working weeks during which the work of the employee shall be supervised directly by a more senior and appropriately experienced person. In the case of a teacher an appropriate Adviser from the Authority shall be invited to monitor the teacher’s work and shall provide the teacher with written advice and comment.

4.6 In exceptional circumstances, where the interests of pupils are deemed to be at risk, consideration may be given to variations in this part of the procedures or in the intervals between the stages in 4.3 and 4.4 above. This consideration should include consultation with the employee’s recognised union or professional association.

4.7 In very exceptional circumstances, consideration may be given to suspending the employee in accordance with paragraph 7 of schedule 3 of the Education Reform Act 1988 and paragraphs 5.4 to 5.7 of the disciplinary procedures.

4.8 At all stages in these procedures the employee should receive appropriate support and/or training to help towards the achievement of an acceptable level of skill and aptitude.

4.9 In appropriate cases and at the discretion of the Chief Education Officer, suitable alternative employment may be offered if this is available.

Notes

1. In arranging additional direct supervision of support staff where there is no suitable person available at the school, the head teacher should seek advice from appropriate personnel in the Education Department.

**5 PROCEDURES FOR A FORMAL HEARING**

5.1 A formal hearing under paragraph 4.3(c) above shall follow the procedures set out in the disciplinary procedures (paragraph 6).

5.2 The head teacher will refer to the governing board’s first committee - all cases of alleged gross lack of skills and/or aptitudes - any case of alleged lack of skills and/or aptitude where an employee is in receipt of a current final written warning - any other cases of alleged lack of skills and/or aptitude where the head teacher considers the case is sufficiently serious to warrant such a referral. All other cases shall be dealt with by the head teacher or by the deputy head teacher who is acting as head for the time being.

5.3 If the alleged lack of skills and/or aptitude is substantiated at the hearing one of the sanctions permitted under the disciplinary procedures shall be selected in accordance with those procedures (paragraph 7).

5.4 There may be cases in which an employee is simultaneously the subject of allegations under these procedures and allegations of misconduct. If the allegations are related, advice should be sought on how to proceed; otherwise they should be dealt with separately under the respective procedures. Notes (a) Joint hearings of allegations under these procedures and misconduct must take place in accordance with the governing board’s disciplinary procedures because the governing board is obliged by Schedule 3 of the Education Reform Act to have such procedures and follow them in any cases involving misconduct.

**6 APPEALS**

6.1 Appeals shall be heard in accordance with the arrangements set out in the disciplinary procedures (paragraph 8).

**7 HEAD TEACHERS**

7.1 Any allegations about lack of skills and/or aptitude on the part of a head teacher shall be referred, through the chair of the governing board, to the Chief Education Officer for investigation. If the Chief Education Officer finds that there is a case to answer he shall proceed in relation to the head teacher as the head teacher acts in relation to an employee under these procedures.

**8 UNION OFFICERS**

8.1 Normal standards of capability and normal procedures should apply to employees who are trade union officials, except that no action will be taken until the circumstances of the case have been discussed with a senior trade union representative or full-time official.

8.2 Where an employee chooses to be accompanied or otherwise assisted by a representative from a recognised trade union, the head teacher, or the clerk to the governing board as the case may be, will seek to arrange meetings, hearings, etc. in consultation with the trade union.

Notes

(a) This section of the procedure is designed to help the governing board demonstrate that it has no intention of contravening legislation which safeguards the rights of employees in relation to trade union membership and of trade union officials in relation to trade union membership and activities.

Date Policy Adopted: 18.11.2019

Date for next renewal: Autumn Term 2020

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Sean Delaney

**Chair of Governors**

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ David Aldworth

**Executive** **Head Teacher**