



ENERGY COAST UTC

TEACHING STAFF CAPABILITY PROCEDURE

2022-25

Approved: Full Governing Body

Signed: Barbara P. Stephens

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1. Purpose

- 1.1 The purpose of this procedure is to assist and encourage all employees to achieve and maintain high standards of job performance.
- 1.2 The aim is to ensure consistent and fair treatment for all and to assist any employee who is considered to be experiencing difficulties in performing satisfactorily the duties required of the post to which s/he was appointed.
- 1.3 It is designed to provide managers and employees with an opportunity to improve their performance in the workplace.
- 1.4 Throughout this procedure the phrase “capability” refers to skill, aptitude, health or any other physical or mental quality of the individual and is therefore distinguishable from any conduct or misconduct of the individual for which the disciplinary procedure would be appropriate, however, in any case where this distinction cannot be clearly made, or in the case of gross incompetence, the disciplinary procedure may be followed.

2. Scope

- 2.1 This procedure applies to all teaching staff.

3. Responsibility

- 3.1 Line managers are responsible to ensure that they comply with the procedure and that staff are aware of the procedure.
- 3.2 It is the responsibility of the relevant member of SLT to ensure that the procedure is kept up to date and relevant.

4. Procedure

- 4.1 It is important to recognise that many issues of capability can, and should be, resolved without recourse to the formal capability procedure. The following is intended as a framework and may need to be adapted to suit the needs of each situation.
- 4.2 It is recognised that a line manager may have occasion, as part of the normal day-to-day management function, to draw the attention of employees to minor inadequacies in performance without having recourse to the procedure set out below. Such action may include the use of advice or admonition without giving rise to doubts as to the employee’s capability.
- 4.3 As soon as a concern is identified by either the line manager or the employee, the issue should be discussed between the employee and his/her line manager. In these circumstances, both parties will have every opportunity to discuss the concern, to make any comments and to record them if desired. Most areas for concern can generally be dealt with through informal discussions and counselling.
- 4.4 Concerns about capability may arise from a number of factors, including:
 - Lack of proficiency and poor overall organisation;
 - Lack of aptitude, skill or desire to engage in continual professional development and learning;
 - Poor attendance at work;
 - Weak or poor progress of students;
 - Weak or poor behaviour of students;

- Failure to meet the Teacher standards;
- Any other significant area of concern identified through appraisal.

4.5 Concerns about capability should not be confused with disability. Where employees becomes disabled during their employment it is important to ensure that actions taken are in line with the requirements of the Equality Act and other relevant legislation.

4.6 An employee has the right to be accompanied and represented by a fellow staff member, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official, must have been confirmed by their union as being competent to accompany a worker at any stage of the formal capability procedure.

4.7 Where there is a concern regarding a teachers' capability appropriate training and support will be put in place, particularly where new responsibilities or changes to working practices are introduced. Temporary supportive strategies such as the appointment of a specific mentor to monitor and support performance, modified workload or additional personalised professional development and learning will be put in place to support staff. Within the monitoring and support programme support mechanisms will be used as necessary to provide effective support and feedback to the individual. Support mechanisms include:

- Lesson observations of peers to observe best practice
- Joint team teaching and co-planning with key staff
- Observations or visits to educational settings
- Personalised continued professional development and learning plans
- External professional development courses or training targeting the area of concern
- Collaboration and visits with special advisory teachers or improvement officers.

4.A short 'informal' support plan which lasts a minimum of one-half term (6-8 weeks) should be put into place in the first instance to address and support within the areas of concern. A record of the training and support offered throughout the 'informal' support plan should be kept and the impact of training evaluated and reviewed throughout. Staff monitoring the performance should offer feedback and instruction to support the employee's performance. Where insufficient progress is made, formal capability procedures must be considered.

5. Formal Capability Meeting

For all formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a Trade Union official, or a Trade Union representative who has been certified by their union as being competent.

5.1 This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Principal capability meetings) or Principal (for other teachers) to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected. If a union official is unavailable for the proposed meeting, this should be rearranged so that representation is available.

5.2 The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

5.3 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Identify the professional shortcomings, for example which of the standards, including the Teachers' Standards DfE, 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);
- Present a structured support plan that will be devised to enable the new objectives to be met and support the teacher to improve their performance, thus enabling structured monitoring moving forward;
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be for example, between four and six weeks; and warn the teacher formally and in writing that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning which is kept on file for 12 months.

5.4 Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the member of staff will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning (as set out below).

6. Monitoring and Review Period Following a Formal Capability Meeting

6.1 A performance monitoring and review period will follow the formal Capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting/s, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

7. Formal Review Meeting

7.1 As with formal Capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a Trade Union official, or a Trade Union representative who has been certified by their union as being competent.

7.2 If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning.

7.3 As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the

handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The member of staff will be invited to a decision meeting.

8. Decision Meeting

- 8.1 As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a Trade Union official, or a Trade Union representative who has been certified by their union as being competent.
- 8.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a recommendation will be made to the Governing Body that the teacher should be dismissed by the College and a hearing will be scheduled. A panel of trustees from the Governing Body will be assembled to receive the recommendation from the decision meeting and make a decision whether dismissal is an appropriate sanction or whether a further period of support and improvement should be given. The member of staff and their representative will be invited to attend this meeting. This will be conducted as a hearing.
- 8.3 A panel of trustees from the Governing Body will be assembled to receive the recommendation from the decision meeting and make a decision whether dismissal is an appropriate sanction or whether a further period of support and improvement should be given. The member of staff and their representative will be invited to attend this meeting. This will be conducted as a hearing.
- 8.4 Prior to the hearing, all parties will be given the choice as to whether the right person has been appointed to conduct and chair the hearing to ensure that the process is independent.
- 8.5 All relevant papers to be considered will be distributed to all parties prior to the hearing taking place.

Conducting the Hearing

All parties present will be given an opportunity to ask questions or challenge the reports and evidence submitted

The employee and their representative should be informed of the decision of the hearing immediately (unless there is an adjournment to clarify any facts).

If following the hearing it is decided that capability action is warranted, within 5 working days, the employee will be advised in writing of the decision by the chair of the meeting, and will specify:

- The details of the failure to meet the required standard;
- Any action required by the employee to remedy the situation;
- Any relevant review period/duration of warning and the consequences or subsequent failure to reach and sustain the required standard of performance or conduct;

9. Decision to Dismiss

- 9.1 The power to dismiss staff for capability reasons rests with the Governing Body.

10. Dismissal

- 10.1 Once the decision to dismiss has been taken, the Governing Body will dismiss the member of staff with notice.

11. Appeal

11.1 If a member of staff feels that a decision against any formal warnings or disagrees with the decision to dismiss them, they may appeal in writing within five working days of receiving formal notification of the decision setting out at the same time the grounds for appeal.

11.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

11.3 The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

11.4 The member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

12. General Principles Underlying this Policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

This Policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Principal and Governing Body to quality-assure the operation and effectiveness of the appraisal system. The Principal or appropriate senior colleague will review all member of staffs' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Principal will be made aware of any pay recommendations that have been made.

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled member of staffs. The Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

Definitions

Unless indicated otherwise, all references to 'member of staff' include the Principal.

Delegation

Normal rules apply in respect of the delegation of functions by Governing Bodies and Principals.

Grievances

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

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the UTC Sickness Policy and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

Monitoring and Evaluation

The Governing Body and Principal will monitor the operation and effectiveness of the appraisal arrangements for the College.

Retention

The Governing Body and Principal will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.