

**ENERGY COAST UTC**

**TEACHERS' CAPABILITY PROCEDURE**

**2019-2022**

**Approved: Full Governing Body**

**Signed:**

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Revision History			
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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 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

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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 experience;
- 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 become disabled during their employment it is important to ensure that actions taken are in line with the requirements of the Equality Act.
- 4.6 An employee has the right to be accompanied and represented by a fellow worker, 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 a short, time limited support plan should be put in place in the first instance. Where insufficient progress is made on the support plan, formal capability procedures must be considered.

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## **5. Formal Capability Meeting**

- 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.
- 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);
  - Explain any support that will be available to help the teacher improve their performance;
  - 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 teacher 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, 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 teacher 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 teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will restart. 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 teacher 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 teacher 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 teacher 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 decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at the College.

- 8.3 The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## **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 teacher with notice.

## **11. Appeal**

- 11.1 If a teacher 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 teacher.
- 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 teacher will be informed in writing of the results of the appeal hearing as soon as possible.

## **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 teachers' 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 teachers. 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 'teacher' 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. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **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.