Engineering UTC Northern Lincolnshire

Capability Policy and Procedure

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Appendix 1 – Employment Law and Guidance Relating to Capability

1. INTRODUCTION

The Engineering UTC Northern Lincolnshire (ENLUTC) wishes to ensure that all its employees perform their jobs to the best of their ability and that they achieve and maintain a high standard of performance in their work. Every employee should have a current job description and be capable of undertaking the range of duties within it. To this end, the ENLUTC has a Capability Policy and Procedure for matters relating to job performance, where the individual is not meeting the required standard.

1.1 SCOPE

This procedure applies to all staff including Early Career Teachers (ECTs) employed within the ENLUTC.

1.2 DEFINITION

Capability refers to an individual employee's ability to perform the work expected of them to the required standard. Where concerns emerge with an individual's performance it is essential that these are addressed immediately. Both the ENLUTC and the employee must understand their responsibilities with regards to achieving an improvement in performance. The aim of this procedure is to ensure that cases of under-performance are dealt with fairly, with the prime objective of improving an individual's performance to the required level.

This procedure is not intended to be used where poor performance is the result of carelessness, wilful neglect of duty, deliberate failure to carry out reasonable directions or other such actions which can be considered as misconduct. In these cases, this should be considered as a potential disciplinary matter, dealt with under the Disciplinary Policy and Procedure.

Where performance issues are related to an employee's ill health the Managing Attendance Policy and Procedure should be used; if performance concerns are judged to result from misconduct the Disciplinary Policy and Procedure will apply.

Where the Equality Act may apply, reasonable adjustments should be considered in order to provide appropriate support for the employee.

All matters relating to the application of this procedure must be treated with the utmost discretion and professionalism by all the parties involved.

2. PRINCIPAL, DEPUTY PRINCIPAL, ASSISTANT PRINCIPAL AND TEACHERS

The expectations for all teaching staff are outlined in the School Teachers Pay and Conditions Document (STPCD).

2.1 NATIONAL STANDARDS OF EXCELLENCE FOR HEADTEACHERS (including the Principal)

The National Standards of Excellence for Headteachers 2020 clarifies the professional characteristics that Headteachers are required to demonstrate. The standards cover expectations in the four key areas: Qualifications and knowledge, pupils and staff, systems and processes and the self-improving school system.

2.2 DEPUTY PRINCIPAL AND ASSISTANT PRINCIPALS

In addition to carrying out the professional duties of a teacher, senior leaders will play a major role in formulating the aims and objectives of the college; establishing the policies through which they shall be achieved; managing staff and resources to that end; and monitoring progress towards their development. Deputy and assistant principals will undertake the professional duties of the Principal in the event of their absence.

2.3 TEACHERS' STANDARDS

The Teachers' Standards apply to the vast majority of teachers regardless of their career stage including trainees working towards QTS and all teachers completing their statutory induction period.

The standards define the minimum level of practice expected of trainees and teachers from the point of being awarded QTS.

The standards need to be applied as appropriate to the role and context within which a trainee or teacher is practising. Providers of Initial Teacher Training (ITT) will assess trainees against the standards in a way that is consistent with what could reasonably be expected of a trainee teacher prior to the award of QTS. Providers will need to ensure that their programmes are designed and delivered in such a way as to allow all trainees to meet these standards, as set out in the DfE Initial teacher training (ITT): criteria and supporting advice (2025/2026).

The standards will be used to assess an ECT's performance at the end of their induction period in employment. That judgement should reflect the expectation that ECTs have effectively consolidated their training and are demonstrating their ability to meet the standards consistently over a sustained period in their practice.

The Principal (or appraisers) will assess qualified teachers against the standards to a level that is consistent with what should reasonably be expected of a teacher in the relevant role and at the relevant stage of their career (whether an ECT, a mid-career teacher, or a more experienced practitioner). The professional judgement of the Principal and appraisers will therefore be central to performance management against the Standards.

2.4 THE PERFORMANCE MANAGEMENT CYCLE

Any staff who have entered the capability procedure will be removed from the performance management cycle.

2.5 REFERENCES

Under the School Staffing (England) (Amendment) Regulations 2015 the governing body of School A must, at the request of the governing body of School B:

(a) Advise in writing whether or not that member of staff has, in the preceding two years, been the subject of the capability procedures and if so;
(b) Provide written details of the concerns which gave rise to this, the duration of the proceedings, and their outcome.

2.6 EARLY CAREER TEACHERS (ECTs)

The Appropriate Body should be informed where there is serious concern regarding an ECT's progress.

In particularly serious cases of unsatisfactory progress the Principal or designated person may instigate the capability procedure before the end of the induction period. The guidance sets out the actions that must have taken place before the capability procedure can be instigated The capability procedure will not replace the induction process but will be in parallel with it.
The ECT will be monitored against the teacher's standards as outlined in 2.3. The time scale for any objectives set or action taken must be appropriate to the induction period.

If an ECT is dismissed on grounds of capability before the end of the induction period, they may be able to seek suitable employment to complete their induction at another institution. In such cases, the Appropriate Body should pass on any induction records, documentation and assessments, including interim assessments, to the new school and the new Appropriate Body, so that support can be provided.

3. SUPPORT STAFF

For the purpose of this procedure support staff' includes all staff working within the college other than the Principal, deputy principal, assistant principals, and teachers.

Support staff development in college is essential. Staff should be included in a performance management cycle reflecting the timescales and procedures followed for the performance management of teachers. Clear job descriptions should be provided and reviewed as necessary. If performance issues are identified as part of the performance management cycle, support staff will enter the capability procedure.

Although it is expected that support staff would be included in the performance management cycle at the college it is recognised that on occasion this may not be the case. In such circumstances performance concerns should have been raised appropriately during the academic year for example at meetings with line managers or in the course of day to day management. Proper consideration should be given to issues such as task allocation, workload and work patterns prior to entry to this procedure.

4. ROLES AND RESPONSIBILITIES

4.1 THE GOVERNING BODY

Responsibility for initiating this procedure rests with the governing body in relation to capability concerns over the Principal. In such a case the governing body should seek the assistance of the HR team. Where it is not possible for a governor to deal with the case, an appropriate designated person will be appointed to do so at the request of the governing body. If an individual governor has been designated to deal with the matter, that member will not be a member of any panel which may subsequently be convened to consider the matter.

4.2 HR

If consideration is being given to placing an employee in the capability procedure, HR should be contacted prior to an employee entering the procedure.

4.3 PRINCIPAL

Responsibility for initiating this procedure for all other members of staff lies with the Principal. In certain circumstances, the Principal may delegate the management of the case to a line manager who has day-to-day oversight of the employee or to whom the employee reports directly. This person will be referred to as the 'designated person'.

One person should have overall responsibility for the management of the case to ensure consistency. Consideration should be given as to who should be present at meetings within the procedure, for example, if the Principal/designated person requires input from a line manager they should gather this information prior to the meeting or invite the line manager to enter the meeting briefly to provide the necessary input. It is not appropriate to involve any more members of staff than is strictly necessary.

4.4 EMPLOYEE

The employee is expected to cooperate with the procedure and make appropriate efforts to improve their performance to the required standard as agreed at each stage of the procedure. If the employee is also a trade union representative normal procedures will apply. However, no formal action should be taken until a senior trade union representative or full-time official has been informed. A trade union official includes any employee elected or selected under trade union rules to represent other members.

4.5 REPRESENTATION

Employees may be represented by a trade union representative or work colleague (not employed or acting in a legal capacity) at all stages of the procedure.

5. THE PROCEDURE

Entry into the procedure should not come as a surprise to the employee. Performance concerns should have been raised appropriately during the academic year i.e. as part of the performance review process, in meetings with line managers or in the course of day to day management.

Where normal management arrangements do not lead to a significant improvement in performance the procedure should be followed. **It is expected that the employee will have been alerted to the possibility of entering the procedure at an appropriate stage <u>prior</u> to being invited to the Support Programme Meeting.**

Advice should be taken from HR before an employee is placed in the procedure.

The Principal/designated person will be expected to demonstrate reasonable grounds for deciding to enter into the procedure with an employee.

5.1 PRIOR TO ENTERING THE PROCEDURE

Prior to entering the procedure, the Principal/designated person should gather evidence to demonstrate that:

- the employee has been informed of the performance required of them and that this is in accordance with their job description

- the employee has been provided with the appropriate training and support in order to achieve the required level of performance.

- despite the above the employee is failing to achieve the required level of performance.

Evidence should be provided to the member of staff at each stage of the procedure to support any actions taken in relation to areas of performance where there are concerns.

It is not expected that the employee will have been subject to any target related programme to improve performance prior to their entering the procedure other than normal performance management procedures.

It should be borne in mind that a sudden deterioration in standard of work could be the result of job-related or personal factors which could be of a temporary nature. Such problems may either be overcome by discussion and support, or understood and accepted as transient.

The Principal/designated person should also consider whether there has been any significant change in job duties or other work circumstances which might account for the employee's performance.

5.2 REPRESENTATION AND NOTIFICATION

Prior to any meeting taking place under the procedure, the employee should receive a letter stating that they have entered the procedure and briefly outlining the areas of concern. The letter should be received at least three working days prior to any meeting. A copy of the Capability Policy and Procedure should be enclosed with the letter.

Following each meeting within the procedure, the employee should be provided with a letter outlining what has been agreed no later than three working days after the meeting.

At all stages of the procedure, the employee has the right to be accompanied by a trade union representative or a work colleague (not employed or acting in a legal capacity).

The Principal/designated person will be accompanied by an HR representative.

In the event of a hearing being convened the employee would be given 7 working days' notice in writing.

5.3 TIMESCALES

The appropriate length of time for each stage within the procedure will be decided by the Principal/designated person with advice from HR. Every effort will be made at the meeting to agree the timescale with the employee and their representative. However, if this is not possible the Principal/designated person is entitled to impose a timescale. Any points of disagreement will be recorded.

The maximum period for improvement for each of the two stages should not normally be more than 16 working weeks. Therefore, the maximum period for the whole procedure will be not normally be more than 32 working weeks in total. There is provision for an interim review meeting within each stage of the procedure. This meeting must take place no more than 8 weeks into the procedure. The purpose of the meeting is to monitor progress and to provide support; it is not the purpose of the interim review meeting to provide for any extension of the time period for improvement at any stage of the procedure.

In some circumstances, for example, where the Principal/designated person needs to consider performance over a particular period of the school year or with a particular group of pupils; or where there has been some improvement but not a sufficient amount; the period for improvement may be extended in the review meeting at any stage of the procedure.

5.4 FAST TRACK PROCEDURE

In extreme cases where it can be clearly demonstrated that the education of pupils and/or the efficient and effective functioning of the college is being jeopardised or undermined the procedure can be **'fast-tracked'**. In these cases, **the period for improvement will be no more than four working weeks at each stage; eight working weeks in total**. The fast track procedure will normally be used where there are performance concerns about teaching staff.

5.5 STAGES OF THE CAPABILITY PROCEDURE SUPPORT

PROGRAMME MEETING

INTERIM REVIEW MEETING

SUPPORT PROGRAMME REVIEW MEETING

FORMAL STAGE MEETING INTERIM

REVIEW MEETING

FORMAL STAGE REVIEW MEETING

HEARING

APPEAL HEARING

5.6 SUPPORT PROGRAMME MEETING

Prior to entry into the formal stage of the procedure, the college should follow a support programme with the employee as outlined below. A meeting should be convened using the following guidelines:

- **Discuss those aspects of work performance that do not meet the required standards**: The Principal/designated person should bring to the employee's attention the performance expectations, referring to the employee's job description, performance records or evidence of concern as appropriate.
- **Listen to the employee's response**: The Principal/designated person should give the employee an opportunity to respond, provide an explanation and to refer to any mitigating circumstances that have led to this situation.
- **Identify any support or training required**: Any support, training or other resources required by the employee should be identified to assist the individual in achieving the required level of performance. This may entail support from a more experienced professional in a mentoring or coaching capacity.

  Support or training given to ensure improved performance in a particular area must have been instigated before the employee is monitored in this area.

- **Identify and agree targets:** The Principal/designated person should identify specific targets using the SMARTER principle (Specific, Measurable, Achievable, Realistic, Time-related, Evaluated and Reviewed). They must explain clearly the level of improvement required. Agreement will be sought but in the event of a disagreement the Principal/designated person will make the final decision about the appropriate targets. Any disagreement will be recorded. If observations are to be included as part of the target setting the number of observations and the weeks in which they will take place should be agreed at this stage.

- **Identify the timetable for improvement** and agree how the employee's progress will be monitored. This will normally be done by means of regular review meetings with the principal/designated person and may include observation of the employee's work.
- **Agree Action Plan.** An action plan should be produced by the principal/designated person in writing identifying the specific areas of performance that are unsatisfactory, the level of improvement required, the support to be provided to the employee, the timescales for improvement and the review date.

- **Record keeping and evidence gathering. It is expected that the** Principal/designated person will ensure clear and structured information gathering and systematic recording during monitoring periods.

If at any stage during the monitoring period, the employee has concerns regarding the provision of any support, training or other resources that have been identified during the support programme they must raise this issue at the earliest possible opportunity.

Although every effort should be made to reach agreement, should the employee disagree that they should be in the procedure, or at a particular stage within the procedure, the Principal/designated person is entitled to impose it since the capability procedure forms part of the employee's terms and conditions of employment. Any points of disagreement should be recorded.

5.7 SUPPORT PROGRAMME REVIEW MEETING

At the end of the monitoring period, a support programme review meeting should be arranged to review the employee's progress against the agreed targets.

If the employee's performance has improved to the required level, they will be removed from the procedure. However, if within a twelve-month period the employee's performance falls below an acceptable level, the Principal/designated person may re- introduce the procedure, commencing at the point which is deemed appropriate in light of previous action.

If it is felt that no significant improvement has been made a formal stage meeting should be arranged.

5.8 FORMAL STAGE MEETING

The same process should be followed at this meeting as outlined in the Support Programme above:

- Discuss those aspects of work performance that do not meet the required standards
- Listen to the employee's response
- Identify any support or training required
- Identify and (where possible) agree targets
- Identify the timetable for improvement
- Agree Action Plan

It should be made clear that this stage that the meeting represents the beginning of the formal stage of the procedure and that failure to improve may result in a hearing at which the employee may be dismissed.

5.9 FORMAL STAGE REVIEW MEETING

At the end of the agreed monitoring period a formal stage review meeting should be arranged to review the employee's progress against the agreed targets.

If the employee's performance has improved to the required level, they will be removed from the procedure. However, if within a twelve-month period the employee's performance falls below an acceptable level, the Principal/designated person may re-introduce the procedure, commencing at the point which is deemed appropriate in the light of previous action.

If there is evidence that insufficient improvement has been made a hearing will be arranged.

6. SUSPENSION

Where suspension is being considered advice should be taken from HR. If feasible, HR will normally be present in the suspension meeting.

Once the governing body/Principal/designated person has decided to call a hearing where the employee's dismissal is to be considered, it may be appropriate to suspend the employee from duty pending the hearing. In all cases, the chair of the governing body or the Principal will make the decision to suspend and carry out any the suspension meeting.

Suspension should not be undertaken without good reason. It may occur in the following circumstances:

- ***Where it can be clearly demonstrated that the education of pupils and/or the efficient and effective functioning of the college is being jeopardised or undermined.***

Suspension is on full pay, and without prejudice pending the outcome of the hearing.

Where the chair of the governing body decides to suspend the principal the implications for the continued management of the college needs to be considered by the governing body, including any acting up arrangements.

Where the suspension of any other employee is being considered, the chair of the governing body/Principal should arrange a meeting with the employee as soon as possible. They should be informed that the purpose of the meeting is to consider possible suspension. They may be accompanied at the meeting by a union representative or work colleague (not employed or acting in a legal capacity). The college will seek to hold the meeting within 48 hours. It is the employee's responsibility to organise appropriate representation within these timescales.

The employee where accompanied, should be offered the opportunity of a brief meeting with their representative before the meeting. At the meeting the employee should be given relevant information, including reasons for any proposed suspension. The employee should be given an opportunity to make representation concerning the suspension. A brief adjournment should be offered to the employee prior to their making a response.

Where a decision to suspend has been taken, the employee will be advised of this verbally by the chair of the governing body/Principal in the meeting and will receive written confirmation detailing the reasons for the suspension as soon as possible.

Following suspension, the chair of the governing body/Principal should be mindful of the need to expedite matters as quickly as possible.

It may be appropriate to ask the employee whether counselling from the employee assistance provider or the support of occupational health service would be of use.

7. THE HEARING

The hearing will take place before a panel of the governing body or the Principal (provided the Principal has had no previous involvement). The HR representative acting as adviser to the panel will be responsible for convening a hearing to consider the employee's dismissal. The employee will be given at least seven working days' notice in writing of the date, time and place of the hearing

The letter inviting the employee to attend will contain details of the areas of performance which are to be considered and will inform the employee of their right to be accompanied by a union representative or work colleague (not employed or acting in a legal capacity). Copies of any documentation to be considered at the hearing and details of any witnesses to be called will be enclosed with the letter. The employee will be advised that a possible outcome of the hearing could be their dismissal.

If the employee wishes to present documentary evidence to the panel or to call witnesses, details of these should be provided to the HR adviser to the panel no later than three working days in advance of the hearing.

7.1 CONDUCT OF THE HEARING

The conduct of the hearing will follow the same format as the agreed disciplinary procedures, namely:

- The case for the college will be presented by the Principal/designated person or by an HR representative calling witnesses and referring to relevant documentation.
- In the cases of teaching staff an appropriate educational specialist or adviser may be called as an expert witness or asked to provide written evidence.
- The employee or their representative may question any witnesses called.
- The person presenting the college's case may re-examine the witnesses.
- The panel may ask questions of the witnesses.
- The person presenting the college's case may be questioned by the employee or their representative, and by the panel.
- The employee or their representative will then respond, calling witnesses and referring to documentation, if appropriate.
- Witnesses may be questioned by the college's representative, re-examined by the employee or their representative and questioned by the panel, as above.
- The college's representative, then the employee or their representative, will sum up.
- Both parties will withdraw while the panel considers what action should be taken. Wherever possible the chair of the panel should advise the employee verbally of the decision. The decision should be confirmed in writing no later than three working days after the hearing The employee will be notified of their right to appeal against the decision of the panel.

7.2 ACTIONS AVAILABLE TO THE PANEL

The options available to the panel are as follows:

a) No further action

b) A further period of monitoring and review be undertaken. If this results in a second hearing, the case should be heard, if possible, by the same panel of the governing body. If the required level of performance improvement is achieved, then the procedure will cease.

c) Dismissed on the grounds of incapability identified through inadequate performance.

d) Redeployment. The employee may be offered redeployment to a different post within the college, if one is available as an alternative to dismissal. If the post is on a lower grade, there will be no entitlement to protection of salary. This option is contingent upon there being a vacant existing post in the staffing structure

e) Reduction of responsibility. This option may be linked to the redeployment option but could also apply to the post currently held by the employee. Again salary protection will not apply in such circumstances.

8. THE APPEAL

Any appeal must be made in writing to the adviser to the panel within 10 working days of receipt of written notification of the panel's decision.

Any appeal will be heard by a panel of the governing body consisting of different members than those that were used for the hearing. The appeal will be conducted in the same way as the hearing.

An appeal hearing will be arranged within 20 working days of receipt of the notice to appeal, but giving at least seven working days' notice of the date of the hearing.

The chair of the panel which made the original decision may be invited by either side to attend the appeal hearing as a witness.

8.1 ACTIONS AVAILABLE TO THE APPEALS PANEL

The options available to the appeal panel are as follows:

a) To uphold the appeal. In this case the employee will be reinstated and formal procedures will cease. However, it is expected that clear advice will be provided for both the Principal/designated person and the employee, in relation to the performance management of the employee going forward to ensure a sustained level of required performance.

b) To confirm the original decision

c) A further period of monitoring and review be undertaken. If this results in a third hearing, the case should be heard, if possible, by the same panel of the governing body. If the required level of performance improvement is achieved, then the procedure will cease.

d) Redeployment. The employee may be offered redeployment to a different post within the college. if a suitable one is available as an alternative to dismissal. If the post is on a lower grade, there will be no entitlement to protection of salary. This option is contingent upon there being a vacant existing post in the staffing structure

e) Reduction of responsibility. This option may be linked to the redeployment option but could also apply to the post currently held by the employee. Again, salary protection will not apply in such circumstances.

APPENDIX 1 – GUIDANCE RELATING TO CAPABILITY

- Education (School Teachers' Appraisal) (England Regulations 2012 Revised 2019).
- School Staffing (England) (Amendment) Regulations 2015 updated 2020
- The Standards of Excellence for Headteachers 2020
- Teachers' Standards
- School Teachers Pay and Conditions Document 2025
- The Equality Act 2010