

# Appraising teacher performance and dealing with capability issues

*From September 2012*

## Introduction

This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers, including the Executive Headteacher, and for supporting their development within the context of the Federation's plan for improving educational provision and performance, and the standards expected of teachers. It also sets out the arrangements that will apply when teachers fall below the levels of competence that are expected of them.

For the purposes of this policy, the word "Federation" covers Oak, Elm and the Studio.

Revised appraisal arrangements are set out in the Education (Federation Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which replace the Education (Federation Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). Federations and local authorities must stay within the legal framework set out in the Appraisal Regulations and in other relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection). Federations and local authorities must have an appraisal policy for teachers and a policy, covering all staff, which deals with lack of capability. This policy applies to all teachers, including the Executive Headteacher, working within the Federation.

The policy is in two separate sections. Part A covers appraisal. As of 1 September 2012 it supersedes the previous performance management policy, which had been designed to support the 2006 Regulations. The appraisal procedures apply to all teachers employed by the Federation, except those on contracts of less than one term, those undergoing induction (*i.e.* NQTs) and those who are subject to Part B of the policy.

Part B of the policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. On 1 September 2012, it replaces the statutory guidance "*Capability Procedures for Teachers*" that was issued in July 2000. Capability procedures apply only to teachers and headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

---

## **Part A – Appraisal**

Appraisal in this Federation will be a supportive and developmental process designed to ensure that all teachers have the skills and support they need to carry out their role effectively. It will help to ensure that teachers are able to continue to improve their professional practice and to develop as teachers.

### **Links to Federation Improvement, Self Evaluation and Development Planning**

To comply with the requirement to show how the arrangements for performance management link with those for Federation improvement, Federation self-evaluation and Federation development planning and to minimise workload and bureaucracy the appraisal process will contribute significantly to Federation self-evaluation and the wider Federation improvement process.

Similarly, the Federation improvement and development plan and the Federation's self evaluation form are key documents for the appraisal process.

All reviewers are expected to explore the alignment of reviewees' objectives with the Federation's priorities and plans. The objectives should also reflect reviewees' current roles and their professional aspirations.

### **Consistency of Treatment and Fairness**

The Governing Body is committed to ensuring consistency of treatment and fairness in the operation of appraisal and capability.

To ensure this the following provisions are made in relation to moderation, quality assurance and objective setting.

### **The appraisal period**

The appraisal period will run for twelve months from 1<sup>st</sup> October to 30<sup>th</sup> September.

Teachers who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.

### **Appointing appraisers**

The Executive Headteacher will be appraised by the Governing Body, supported by a suitably skilled and/or experienced external adviser who has been appointed by the Governing Body for that purpose.

In this Federation the task of appraising the Executive Headteacher, including the setting of objectives, will be delegated to a sub-group consisting of three members of the Governing Body.

The Executive Headteacher will decide who will appraise other teachers.

### **Setting objectives**

The Executive Headteacher's objectives will be set by the Governing Body after consultation with the external adviser.

Objectives for each teacher will be set before, or as soon as practicable after, the start of each appraisal period. Objectives must be set by 31<sup>st</sup> October.

---

The objectives set will be rigorous, challenging, achievable, time-bound, fair and equitable in relation to teachers with similar roles/responsibilities and experience, and will have regard to what can reasonably be expected of any teacher in that position given the desirability of the reviewee being able to achieve a satisfactory balance between the time required to discharge professional duties and the time required to pursue personal interests outside work. They shall also take account of the teacher's current role and professional aspirations and any relevant pay progression criteria. They should be such that, if they are achieved, **they will contribute to improving the progress of students at the Federation.**

The reviewer and reviewee will seek to agree the objectives but where a joint determination cannot be made the reviewer will make the determination.

In this Federation

- teachers, including the Executive Headteacher, will not necessarily all have the same number of objectives – but all will have at least three
- all teachers including the Executive Headteacher will have a student attainment target linked to Federation priorities
- all teachers, including the Executive Headteacher, will have a whole Federation objective, related to the Federation development plan
- all teachers, including the Executive Headteacher, will have an objective, which will normally be a team objective, linked to the development of teaching and learning.

Though performance management is an assessment of overall performance of teachers and the Executive Headteacher, objectives cannot cover the full range of a teacher's roles/responsibilities. Objectives will, therefore, focus on the priorities for an individual for the cycle. At the review stage other aspects of a teacher's roles/responsibilities will be considered, including the way in which they have fulfilled all their professional duties.

Before, or as soon as practicable after, the start of each appraisal period, each teacher will be informed of the standards against which that teacher's performance in that appraisal period will be assessed. All teachers will be assessed against the set of standards contained in the document called "Teachers' Standards" published in July 2011, and those expressed in individual job descriptions.

### **Quality Assurance**

The Executive Headteacher has determined that he, and/or a delegated member of the Federation's Senior Leadership team, will moderate all planning statements to check that the objectives recorded:

- are consistent between those who have similar experience and similar levels of responsibility;
- comply with the Federation's performance management policy, the regulations and the requirements of equality legislation

The Governing Body will nominate a governor, who will not be involved in the Executive Headteacher's appraisal or any appeal regarding the Executive Headteacher's appraisal, to ensure that the Executive Headteacher's planning statement is consistent with the Federation's improvement priorities and complies with the Federation's performance management policy and the regulations.

---

The Governing Body will review the quality assurance processes when the appraisal policy is reviewed.

## **Reviewing performance**

### *Observations*

This Federation believes that observation of classroom practice and other responsibilities is important both as a way of assessing teachers' performance in order to identify any particular strengths and areas for development they may have and of gaining useful information which can inform Federation improvement more generally. All observations will be carried out in a supportive fashion, and **all** contribute to appraisal, and consequently may contribute to the capability procedures.

At the Federation, teachers' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the teacher and the overall needs of the Federation. Classroom observations evaluating the quality of teaching will be carried out by those with QTS. In addition to full lesson observations, the Executive Headteacher, members of the senior leadership team or other leaders with responsibility for teaching standards (such as Heads of Department) may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances.

Teachers (including the Executive Headteacher) who have responsibilities outside the classroom should also expect to have their performance of those responsibilities observed and assessed.

The Federation wishes to encourage a culture in which all teachers take responsibility for improving their teaching through appropriate professional development. Professional development will be linked to Federation improvement priorities and to the ongoing professional development needs and priorities of individual teachers.

### *Feedback from Observations*

Teachers will receive constructive feedback on their performance throughout the year and as soon as practicable after an individual observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas that need attention. Where there are concerns about **any** aspects of the teacher's performance the teacher's assigned appraiser (often, but not always, their immediate line manager) will meet the teacher formally to:

- give clear feedback to the teacher about the nature and seriousness of the concerns;
- give the teacher the opportunity to comment and discuss the concerns;
- agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- make clear how, and by when, the appraiser will review progress (*A further lesson observation will always be integral to the review. The amount of time should reflect the seriousness of the concerns, but will ordinarily be no more than 4 working weeks*);
- explain the implications and process if no – or insufficient – improvement is made.

---

In all cases, a further full lesson observation will be undertaken within 4 working weeks of the initial meeting. This observation will be conducted by a member of the Federation's Senior Leadership Team without notice being given to the teacher to be observed. The observation outcomes will be shared with the teacher and their assigned appraiser.

If the appraiser is satisfied that the teacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

### **Transition to capability**

If the appraiser is not satisfied with progress, the teacher will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure, and will be invited to a formal capability meeting. At this point the responsibility for improving the teacher's performance will be transferred to a senior member of staff (determined by the Executive Headteacher).

### **Annual assessment**

Each teacher's performance will be formally assessed in respect of each appraisal period. In assessing the performance of the Executive Headteacher, the Governing Body must consult the external adviser.

This assessment is the end point to the annual appraisal process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year in interim meetings which will take place (*e.g. once a term*). A mid-year review (in March) will be formally recorded.

The teacher will receive as soon as practicable following the end of each appraisal period – and have the opportunity to comment in writing on – a written appraisal report. In this Federation, teachers will receive their written appraisal reports by 31<sup>st</sup> October (31<sup>st</sup> December for the Executive Headteacher). The appraisal report will include:

- details of the teacher's objectives for the appraisal period in question;
- an assessment of the teacher's performance of their role and responsibilities against their objectives and the relevant standards;
- an assessment of the teacher's training and development needs and identification of any action that should be taken to address them;
- an assessment of how successfully the teacher has executed their professional duties;
- a recommendation on pay where that is relevant (*NB – pay recommendations need to be made by 31<sup>st</sup> December for head teachers and by 31<sup>st</sup> October for other teachers*).

The assessment of performance and of training and development needs will inform the planning process for the following appraisal period.

### **Training and Support**

The Federation's CPD programme will be informed by the training and development needs identified in the training annex of the reviewees' planning and review statements. (This will be monitored by the Executive Headteacher and/or delegated member of SLT).

---

The governing body will ensure in the budget planning that, as far as possible, appropriate resources are made available in the Federation budget for any training and support agreed for reviewees.

An account of the training and development needs of teachers in general, including the instances where it did not prove possible to provide any agreed CPD, will form a part of the Headmaster's annual report to the governing body about the operation of the appraisal in the Federation.

With regard to the provision of CPD in the case of competing demands on the Federation budget, a decision on relative priority will be taken with regard to the extent to which: (a) the CPD identified is essential for a reviewee to meet their objectives; and (b) the extent to which the training and support will help the Federation to achieve its priorities. The Federation's priorities will have precedence. Teachers should not be held accountable for failing to make good progress towards meeting their performance criteria where the support recorded in the planning statement has not been provided.

## **Part B - Capability Procedure**

This procedure applies only to teachers or the Executive Headteacher about whose performance there are serious concerns that the appraisal process has been unable to address.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the 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.

### **Formal capability meeting**

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for head teacher capability meetings) or head teacher (for other teachers). The meeting allows the teacher, accompanied by a companion if they wish, 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.

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.

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 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 will include

---

the setting of new short-term objectives focused on the specific weaknesses that need to be addressed, the success criteria that are 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 will normally be 4 working weeks, *and* warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, such as when professional shortcomings have been repeatedly identified, **this warning will be a final written warning.**

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.

### **Monitoring and review period following a formal capability meeting**

A performance monitoring and review period (usually of 4 working weeks' duration) will follow the formal capability meeting. Formal monitoring (including further lesson observations), evaluation, guidance and support will continue during this period. Some observations will be conducted by members of the Federation's Senior Leadership Team without notice being given to the teacher to be observed. The observation outcomes will be shared with the teacher and their assigned appraiser. 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).

### **Formal review meeting**

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.

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 re-start (with the originally assigned appraiser). 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.

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.

---

## **Decision meeting**

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.

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 (with the originally assigned appraiser).

If performance remains unsatisfactory a recommendation will be made to the Governing Body that the teacher should be dismissed. The Staff Dismissal Committee will meet as soon as practicable to confirm this decision. Thereafter, 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.

## **Appeal**

If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of being formally advised of the decision, setting out at the same time the grounds for appeal. 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.

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

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**

The Capability 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 head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. *The Executive Headteacher and/or delegated member of SLT will review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Executive Headteacher/member of SLT will also be 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 and will abide by all relevant equality legislation.

### **Definitions**

---

Unless indicated otherwise, all references to “teacher” include the Executive Headteacher.

### **Delegation**

Normal rules apply in respect of the delegation of functions by Governing Bodies, and Head teachers.

### **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 Federation’s absence 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 procedure*. 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 will monitor the operation and outcomes of performance management arrangements.

The Executive Headteacher will provide the governing body with a written report on the operation of the Federation’s appraisal policy annually. The report will not contain any information which would enable any individual to be identified. The report will include:

- the operation of the appraisal policy;
- the effectiveness of the Federation’s performance management procedures;
- teachers' training and development needs.

The Governing Body is committed to ensuring that the appraisal process is fair and non-discriminatory and the following monitoring data should be included in the Executive Headteacher’s report because they represent the possible grounds for unlawful discrimination:

- Race
- Sex
- Sexual orientation
- Disability
- Religion and belief
- Age

- Part-time contracts
- Trade union membership.

The Executive Headteacher will also report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination under any of the categories above.

### **Review of the Policy**

The Governing Body will review the appraisal policy every Federation year in the first half of the summer term in the Resources Committee meeting.

The Governing Body will take account of the Executive Headteacher's report in its review of the appraisal policy. The policy will be revised as required to introduce any changes in regulation and statutory guidance to ensure that it is always up to date.

To ensure teachers are fully conversant with the appraisal arrangements, all new teachers who join the Federation will be briefed on them as part of their introduction to the Federation.

### **Access to Documentation**

Copies of the Federation improvement and development plan and SEF are published on the Federation's intranet and/or can be obtained from the Federation office.

### **Retention**

The governing body and head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

<b>Title of Document</b>	Appraisal and Capability
<b>Status</b>	Statutory
<b>Policy prepared by</b>	HR Manager
<b>Source (if any)</b>	DfE Model Policy
<b>Committee responsible</b>	
<b>Date of approval by FGB</b>	
<b>Period before review</b>	
<b>Date of review by committee</b>	