

# APPRAISAL AND CAPABILITY POLICY

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## 1. DEFINITIONS

- 1.1 Within this policy 'we' and 'us' means the Federation.
- 1.2 The term 'Executive Principal' also refers, where appropriate, to any other title used to identify the Executive Principal.
- 1.3 The term 'employee' refers to any member of the Federation staff employed to work at any setting within the Federation.
- 1.4 The term 'senior leader' refers to any member of the Senior Leadership Team (SLT), as defined by the Academy Teachers' Pay and Conditions Document, or a senior support employee in cases involving support staff, delegated by the Executive Principal to deal with an appraisal and/or capability matter under these procedures. A senior leader may only make a decision to issue a sanction up to and including a final written warning.
- 1.5 If the Executive Principal, following consultation with the Chair of Directors, considers that there is no senior leader to whom they can reasonably delegate a specific capability matter, then the Executive Principal will take the role of the senior leader for that specific case. The role of the 'Executive Principal' under this procedure will then be performed by a disciplinary committee of Federation Directors consisting of not less than three Directors, (except in circumstances provided for in the Secretary of State's guidance on the staffing regulations), none of whom will have had previous involvement in the case.
- 1.6 The role of the Executive Principal will be taken by appropriate Directors as indicated, where the appraisal and/or capability being reviewed is that of Executive Principal.
- 1.7 'Lack of capability' is defined as a situation in which an employee fails consistently to perform their duties to a wholly satisfactory standard of performance over a period of time.
- 1.8 Managers should address performance concerns as they arise in a timely manner and should not wait for the annual performance assessment to do this.

## 2. PURPOSE

- 2.1 This policy sets out the framework for a clear and consistent assessment of the overall performance of employees covered by the appraisal policy, and for supporting their development within the context of our plan for improving educational provision and performance. It also sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.
- 2.2 This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation. We may also vary any part of this procedure, including any time limits, as appropriate in any case.

## 3. PART A: APPRAISAL

- 3.1 This section covers appraisal and applies to all teachers and support staff employed by us, except senior leaders (see Federation Leadership Pay and Appraisal Policy), those on contracts of less than one term, and those who have been transferred to Part B of the policy.
- 3.2 The appraisal policy will be a supportive and developmental process designed to ensure that all employees have the skills and support they need to carry out their role effectively. It will help to ensure that all employees are able to continue to improve their professional/employment practice and to develop in their respective roles.

## 4. THE APPRAISAL PERIOD

- 4.1 The appraisal period runs for twelve months from 1 September to 31 August.
- 4.2 Employees 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 review period will be determined by the duration of their contract.
- 4.3 For colleagues employed in their first year of employment, staff performance will be appraised through the probation process. Colleagues who successfully pass their probation year will automatically migrate to the performance review process.
- 4.4 The Executive Principal will decide who will appraise employees; this will typically be their line manager. This will be notified to staff annually.

## 5. PERFORMANCE REVIEW MEETING

- 5.1 Prior to their annual performance review meeting being held, the employee will receive a letter detailing the outcome of their objective targets, along with an overall grade.
- 5.2 It is expected that, prior to their performance review meeting, the employee will begin to reflect upon their targets and make comments upon the PR document. Employees are also encouraged to consider targets for the forthcoming year, to be discussed with the appraiser during the performance review meeting.
- 5.3 Objectives should be set before the start of each appraisal period or as soon as is practicable afterwards. The objectives will be Specific, Measurable, Achievable, Realistic and Time-bound and will be appropriate to the employee's role and level of experience. The appraiser and employee will seek to agree the objectives but, if that is not possible, the appraiser will determine the objectives. Objectives may be revised if circumstances change.
- 5.4 The deadline for completing the final performance review document will usually be 31 October.
- 5.5 The performance review document will include:
- details of the employee's objectives for the appraisal period in question;
  - an assessment of the employee's performance of their role and responsibilities against their objectives and, for teaching staff, against the relevant standards;
  - an assessment of the employee's training and development needs and identification of any action that should be taken to address them. The assessment of performance and of training and development needs will inform the planning process for the following appraisal period;
  - a recommendation on pay where relevant, linked to the relevant pay policy.
  - the opportunity for both the employee and appraiser to make comments.
- 5.6 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 at least once during the remainder of the appraisal period.

## 6. PAY PROGRESSION BASED ON PERFORMANCE

- 6.1 All decisions made regarding pay performance will be linked to assessment of performance. For detailed information regarding this, please refer to the Federation Staff Academy Pay Policy (for staff appointed 2015 onwards or those who chose to transfer to the academy contracts) or the Federation Staff Teachers' Pay Policy (for those who chose not to transfer.)
- 6.2 All staff can expect to receive regular, constructive feedback on their performance and are subject to annual appraisal that recognises their strengths, informs plans for their future development and helps to enhance their professional practice. This would be typically managed through the annual performance review process or, for those colleagues in their first year of employment, the probation process.
- 6.3 Decisions regarding pay progression will be made with reference to the staff performance review documents and the pay recommendations they contain. In the case of ECTs, whose appraisal arrangements are different, pay decisions will be made by means of the statutory induction process. It will be possible for a 'no progression' determination to be made without recourse to the capability procedure.
- 6.4 To be fair and transparent, assessments of performance will be properly rooted in evidence.
- 6.5 Data from the previous academic year, where held, will be used to determine pay progression.
- 6.6 All information on pay scales can be found in our pay policies.

## 7. STAFF OBSERVATIONS

- 7.1 Staff observations are a useful way to assess performance, identify any particular strengths and areas for development, and gain useful information which can inform Federation improvement more generally. All observations will be carried out in a supportive fashion.
- 7.2 Employees will receive constructive feedback on their performance throughout the year and as soon as is practicable after an observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas of development.

### 7.3 OBSERVATION OF TEACHERS AND TEACHING ASSISTANTS

- 7.3.1 We believe that observation of classroom practice and other responsibilities is important for teachers and staff who support teachers in the classroom.
- 7.3.2 Teachers' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the employee and the overall needs of the Federation. Classroom observation of teachers will be carried out by senior or middle leaders with QTS. Employees who have responsibilities outside the classroom should also expect to have their performance of those responsibilities observed and assessed.

### 7.4 LEARNING WALKS

- 7.4.1 In addition to formal observation, the Executive Principal, or other leaders with responsibility for teaching standards, may take learning walks 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 learning walk observations will vary depending on specific circumstances.

### 7.5 OBSERVATION OF SUPPORT STAFF

- 7.5.1 Support staff observation will focus on the job description of the employee and the expected standards of performance will be made clear by the appraiser. Observation of performance will be graded, identifying areas of strength and development.
- 7.5.2 Support staff will be regularly observed but the amount and type of observation will depend on the individual circumstances of the employee and the overall needs of the Federation

## 8. DEVELOPMENT AND SUPPORT

- 8.1 Appraisal is a supportive process which will be used to inform continuing professional development. We wish to encourage a culture in which all employees take responsibility for improving their performance through appropriate development.
- 8.2 Staff professional development will be linked to Federation improvement priorities and to the ongoing professional development needs and priorities of individual staff.

## 9. STAFF ABSENCE AND THE USE OF THIS PROCEDURE

- 9.1 It is important that staff sickness absence should not delay or avoid the use of informal or formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay.
- 9.2 Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the Federation.
- 9.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting, the employee may present a written submission for consideration and/or be represented by a companion in their absence.
- 9.4 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training.
- 9.5 We may consider adjusting this procedure in appropriate cases, for example moving from this procedure to procedures used by us to terminate the employment of the employee on the grounds of ill health, where appropriate.
- 9.6 Where an employee is persistently unable or unwilling to attend a capability meeting without good cause, we will make a decision on the evidence available and may be taken to proceed in their absence.



## 10. RIGHT TO BE ACCOMPANIED

- 10.1 When attending formal meetings which could result in a written warning or dismissal, employees have a right to be accompanied by a trade union representative or appropriate workplace colleague.
- 10.2 If the chosen companion is unavailable on the scheduled date, a meeting should be within five school days after the scheduled date. Where there is a request to postpone a hearing for more than five school days because a trade union representative or other companion is not available, the senior leader will consider a postponement if it does not cause unreasonable delay.
- 10.3 The companion should be allowed to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the employer from explaining their case, or prevent any other person at the hearing from making their contribution.

## 11. PART B: CAPABILITY PROCEDURE

### 12. STAGE 1- INFORMAL SUPPORT

- 12.1 Concerns about an aspect of an employee's performance will, in the first instance, be handled by their line manager.
- 12.2 Where there are more significant or repeated concerns about any aspects of the employee's performance, or where an employee has not passed their performance review, a nominated senior leader will meet with the employee within 10 school days of the concerns being raised to:
- give clear feedback about the areas of concern;
  - give the employee the opportunity to comment on and discuss the concerns and establish the likely causes of poor performance and identify any training needs/support needed (for example coaching, monitoring, structured observation);
- 12.3 Where appropriate, in order to support employees to improve their performance, an informal support plan will be produced and a Support Plan Lead allocated. The informal support plan will be written and agreed within 10 school days of the initial performance concerns being raised.
- 12.4 At this point, the senior leader will explain the implications and process if no, or insufficient, improvement is made.

- 12.5 The core purpose of the support plan is to:
- clarify the required standards and set targets
  - agree any support to be provided by the Support Plan Lead (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
  - make clear how, and by when, the senior leader will review progress;
- 12.6 The duration of the informal support will reflect the seriousness of the concerns, however it is expected this process will not last for more than 2 months.
- 12.7 The senior leader will write to the employee, giving them at least 5 school days' notice of, and inviting them to attend a support plan review meeting, along with the Support Plan Lead. The letter will list evidence (as detailed within the support plan) that will be discussed during the meeting, and will invite the employee to provide any supporting evidence of their own.
- 12.8 During the support plan review meeting, the employee's progress towards the targets detailed in the support plan will be discussed with the employee and support plan lead.
- 12.9 Following the meeting, the senior leader will review the evidence and a decision will be made regarding whether sufficient progress has been made.
- 12.10 If the senior leader is satisfied that the employee 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.
- 12.11 If the desired standard is not sustained for a Performance Review Cycle or where results do not meet required expectations or there is subsequent underperformance, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.
- 12.12 The senior leader will keep a note of any concerns, the support given and the review judgement. A copy of this note will be given to the employee. If required, this will inform any decision on transition to the capability procedure.

### 13. STAGE 2: FORMAL CAPABILITY PROCEDURE

- 13.1 If, under Part A, an employee's performance is not 'good' or 'better', or where there has not been a sustained improvement in performance following a period of informal support, or where there are serious concerns identified about capability, the senior leader or other person with line management responsibility for the employee (Chair of Directors for the Executive Principal), will invite the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible.
- 13.2 The senior leader will write to the employee at least 5 school days in advance to inform them about:
- the date, time and place of the meeting;
  - the basic details of the concerns about the employee's performance and possible consequences of them;
  - the employee's right to be accompanied by a representative of their trade union or a workplace colleague of their choice;
  - the titles of enclosed copies of any documents to be used at the meeting;
  - names of any witnesses to be called;
  - their right to call witnesses on their behalf;
  - the name and office of any adviser who will accompany the senior leader at the meeting.
  - invite the employee to submit evidence they wish to be considered.
- 13.3 An extra copy, together with any enclosures, will be provided for the employee's companion. This meeting is intended to establish the facts. It will be conducted by a senior leader delegated by the Executive Principal (or the Chair of Directors for Executive Principal). The meeting will allow the employee 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.
- 13.4 During the meeting the senior leader will:
- identify the poor performance, including which of the standards expected of the member of staff are not being met, or, in the case of support staff, which aspects of their job description are not being performed to the expected standard;
  - make it clear what improved standards of performance are needed;
  - ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations.

- 13.5 As a result of the meeting, the senior leader will decide on the appropriate action to take which could be as follows:
- The senior leader 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 senior leader may also adjourn the meeting if it is decided 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.
  - Where the employee is found to be performing unsatisfactorily, the senior leader will issue a written warning.
- 13.6 Where a written warning is issued, the employee will be informed about their right of appeal to the Executive Principal. Notes will be taken of formal meetings and a copy sent to the employee and any companion.
- 13.7 Where appropriate, in order to support employees to improve their performance, a formal support plan will be produced and a Support Plan Lead allocated. The formal support plan will be written and agreed as soon as possible, in any event no later than 10 school days of the formal capability meeting.
- 13.8 At this stage the senior leader will agree the date of the formal review meeting with the employee and any companion, and the Support Plan Lead.
- 13.9 The senior leader will warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to their dismissal.

- 13.10 The core purpose of the formal support plan is to:
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures.
  - include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;
  - identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals;
  - agree any support to be provided by the Support Plan Lead (e.g. coaching, mentoring, structured observations), that will be provided to help address specific concerns;
  - set out the timetable for improvement and explain how performance will be monitored and reviewed;
- 13.11 The timetable for the formal support plan will depend on the circumstances of the individual case but will be reasonable and proportionate, between four and ten weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved.
- 13.12 Notes will be taken of formal meetings and a copy sent to the employee and any companion. Where a written warning is issued, the employee will be informed in writing of the matters discussed in 12.4 above.
- 13.13 The employee will also be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in a final written warning which could then lead to dismissal if wholly satisfactory performance is not achieved, together with the time limit for appealing against the written warning.
- 13.14 If the concerns relate to a lack of capability that poses a risk to the health, safety or wellbeing of children, or is likely to result in serious damage to students' education, the shorter timescale may be appropriate. In such cases, the senior leader may exceptionally decide to issue a first and final written warning, if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.

13.15 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a formal review meeting unless the employee had been issued with a final written warning, in which case they will be invited to a decision meeting.

#### 14. FORMAL REVIEW MEETING

14.1 At least 5 school days before the date for the formal review meeting, the senior leader will write to the employee to remind them about:

- the date, time and place of the meeting;
- the basic details of the concerns about the employee's performance and possible consequences of them;
- the employee's right to be accompanied by a representative of their trade union or a workplace colleague of their choice;
- the titles of enclosed copies of any documents to be used at the meeting;
- names of any witnesses to be called;
- their right to call witnesses on their behalf;
- the name and office of any adviser who will accompany the senior leader at the meeting.
- invite the employee to submit evidence they wish to be considered.

14.2 During the formal support plan review meeting:

- the employee's progress towards the targets detailed in the Formal Support Plan will be discussed with the employee and Formal Support Plan Lead.
- the employee will be given the opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- evidence of the employee's progress towards the Formal Support Plan targets will be considered.

14.3 If the senior leader is satisfied that the employee is making or has made sufficient improvement, the formal capability procedure will cease and the appraisal process will continue as normal.

14.4 In cases:

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

- 14.5 If the improvement is not sustained for a performance review cycle, or where results do not meet required expectations or there is subsequent underperformance, the decision may be taken to reinstate the formal support plan under Stage 2 of this policy, or to issue a final written warning.
- 14.6 Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal at a dismissal decision meeting. They will also be informed about their right of appeal to the Executive Principal.
- 14.7 Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.
- 14.8 The employee will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date of the dismissal decision meeting will be agreed with the employee and any companion.
- 14.9 At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

## 15. STAGE 3: DISMISSAL DECISION MEETING

- 15.1 The meeting will be conducted by the Executive Principal (or a panel of Directors for the Executive Principal).
- 15.2 The Executive Principal will write to the employee at least 5 school days in advance to remind them about:
- the date, time and place of the meeting;
  - the basic details of the concerns about the employee's performance and possible consequences of them;
  - the employee's right to be accompanied by a representative of their trade union or a workplace colleague of their choice;
  - the titles of enclosed copies of any documents to be used at the meeting;
  - names of any witnesses to be called;
  - their right to call witnesses on their behalf;
  - the name and office of any adviser who will accompany the Executive Principal at the meeting.
  - submitting any evidence they wish to be considered.

- 15.3 During the dismissal decision meeting, the Executive Principal will consider:
- the employee's progress towards the targets detailed in the formal support plan will be discussed with the employee and Formal Support Plan Lead.
  - evidence of the employee's progress towards the formal support plan targets.
- 15.4 As a result of the meeting, the Executive Principal will decide upon the appropriate action to take which would be as follows:
- The Executive Principal may conclude that an acceptable standard of performance has been achieved during the further monitoring and review period, therefore capability procedure will cease and the appraisal process will continue as normal.
  - The Executive Principal may adjourn the meeting if it is decided 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.
  - If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short, specified assessment period.
  - If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed.
- 15.5 If a decision is made to dismiss, the employee will be informed in writing 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 whether the notice is to be served or there will be pay in lieu of notice.
- 15.6 They will also be informed about their right of appeal to an appeals committee of Federation Directors, none of whom will have had any previous involvement in the case. The notice of appeal should be sent to the Clerk to the Directors ([clerk@rutlandfederation.com](mailto:clerk@rutlandfederation.com)) within 5 school days of receipt of the written decision to dismiss.



## 16. RIGHT OF APPEAL

- 16.1 If an employee feels that a decision to dismiss them, or other formal action taken against them, is wrong or unjust, they may appeal in writing against the decision within 5 days of the decision, setting out at the same time the grounds for appeal.
- 16.2 The employee will be informed in writing of the time and date of the Appeal Hearing, which should be held without unreasonable delay.
- 16.3 At least 5 school days in advance of the meeting, the employee will be reminded in writing about:
- the date, time and place of the meeting;
  - the employee's right to be accompanied by a representative of their trade union or a workplace colleague of their choice;
  - the titles of enclosed copies of any documents to be used at the meeting;
  - names of any witnesses to be called;
  - their right to call witnesses on their behalf;
  - the name and office of any adviser who will be present at the meeting.
- 16.4 The process of the appeal hearing is to:
- introduce those present to each other, explaining their presence if necessary,
  - explain the purpose of the meeting, how it will be conducted, and the powers the people hearing the appeal have,
  - ask the employee why they are appealing,
  - invite the Executive Principal/senior leader to present the case for dismissal,
  - ask questions of witnesses,
  - pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.
  - the employee summarises their case.
  - the Executive Principal/senior leader summarises their case.
- 16.5 Once the relevant issues have been explored, the chair of the meeting will call an adjournment to consider the decision which may either be revoked or upheld.
- 16.6 Where possible, the meeting will be readjourned and the decision given to the employee in writing. If this is not possible, the decision will be confirmed in writing.
- 16.7 If relevant, if a decision to dismiss is upheld, the employee will be notified in writing that the employee is to be dismissed, whether with notice or with pay in lieu of notice.
- 16.8 If relevant, if a decision to dismiss is not upheld, the employee shall be informed, and the notice of dismissal shall be withdrawn.

## 17. GRIEVANCES ARISING DURING THE PROCEDURE

- 17.1 Where an employee has a grievance against the way the senior leader has conducted the procedure, it will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior leader is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

## 18. CONFIDENTIALITY

- 18.1 Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 18.2 The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under our Federation Staff Disciplinary Policy.