



**The Elliot Foundation Academies Trust
Capability Policy
September 2013**

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1 Introduction

- 1.1 TEFAT is committed to providing high quality teaching and learning. Our aim is to provide opportunities for every child whatever their ability and it is through our workforce that we hope to achieve this. In our academies each employee will be given support to help them develop to their full potential in their job and in turn this will help improve outcomes for our young people.
- 1.2 We are committed to continually developing and improving performance, guiding our employees through their careers with us. Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise. This involves effective day-to-day supervision, carrying out appraisals, providing development opportunities and operating a fair and reasonable capability process. We understand that managing and improving performance not only helps the employee but also the children and ultimately the academy community as a whole.
- 1.3 Revised appraisal arrangements for teachers came into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which have replaced the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations).
- 1.4 The Appraisal Regulations set out the principles that apply to teachers in all maintained schools and unattached teachers employed by a local authority, where they are employed for one term or more.
- 1.5 TEFAT has decided to implement these Appraisal Regulations with regards to teachers in all its academies with effect from September 2013.
- 1.6 TEFAT has decided to use the principles of the Appraisal Regulations and apply them to support staff employed within its academies to ensure consistency across all employees.
- 1.7 This policy has been implemented following consultation with trade unions and employees within TEFAT.
- 1.8 TEFAT adopted this policy in September 2013. It will review it in 12 months
- 1.9 This policy has been implemented following consultation with the TEFAT NJC and Academy Principals

2. Purpose and application of the policy

- 2.1 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them.
- 2.2 The policy sets out the formal capability procedure which applies to employees about whose performance there are serious concerns that the appraisal process has been unable to address. This part applies both to teachers and support staff.
- 2.3 It is expected that transition from appraisal to this policy will only apply when the appraisal process has failed to secure improvements in performance where concerns are raised.

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3. Capability Procedure (applicable to all employees)

- 3.1 This procedure applies only to employees about whose performance there are serious concerns that the appraisal process (including the feedback meeting and any informal review period) has been unable to address. This procedure will only be applied when all informal support as set out in the appraisal policy has been provided and been exhausted. All incidences of formal capability should be notified to the TEFAT Director of HR.
- 3.2 At least five working days' written notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee 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 employee 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. It will also state the name(s) of any other person invited to attend and in what capacity they are attending. The meeting may be rearranged by mutual agreement if the representative is not available on the suggested date.

Formal capability meeting

- 3.3 This meeting is intended to establish the facts. It will be conducted by the Principal or other senior employees delegated this responsibility by the Principal. At the meeting the concerns regarding performance will be put to the employee and the employee will be able to respond to those concerns and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 3.4 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 to consider any additional information.
- 3.5 During a formal capability meeting, the person conducting the meeting will:
- identify performance shortcomings
 - identify what action (including support provided) has been taken to date and what the outcome was;
 - give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures at the earliest opportunity (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 employee improve their performance including identification of training needs;
- identify if there are any contributing factors to the underperformance of the member of staff such as domestic or health issues;
- set out the timetable and support programme for improvement and explain how performance will be monitored and reviewed. The timetable for this will depend on the circumstances of the individual case. In TEFAT academies, the standard set review period is normally six weeks. However in some cases it will be appropriate for a shorter period of four weeks to be set. In exceptional circumstances, this period can be extended by up to a maximum of ten weeks. The period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made;
- and finally,
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this warning could be a final written warning.

- 3.6 Minutes will be taken of all formal meetings and a copy sent to the employee. Where a warning is issued, the employee 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

- 3.7 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the performance monitoring and review period, the employee 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). The employee should also be made aware that if his/her performance becomes acceptable by the end of the review stage, any warning will be disregarded and expunged from the file after 12 months. A copy of the warning shall be placed on the teacher's file and he/she shall be given a copy. The acknowledgement of the teacher, together with any observations/notes of dissent, shall form part of the record.

Formal review meeting

- 3.8 As with the formal capability meeting, at least five working days' written notice will be given of the formal review meeting, and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative certified by their union as being competent. The meeting will be conducted by the Principal or other senior employees delegated this responsibility by the Principal
- 3.9 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 3.10 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 up to a maximum of 4 additional weeks;
 - If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.
- 3.11 As before, minutes will be taken of formal meetings and a copy sent to the employee. Where a final 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 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. At the end of the further monitoring and review period, the employee will be invited to a decision meeting.

Decision meeting

- 3.12 As with the capability meeting and the formal review meeting, at least five working days' written notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative. The Decision meeting will be held by the Principal (except in the case of decisions about the Principal in which case the decision meeting is held by two directors and one governor).
- 3.13 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.
- 3.14 If performance is deemed to have improved but not reached the required standard a further monitoring and review period can be imposed. There will be a further decision meeting at the end of that extended monitoring and review period.

- 3.15 If performance remains unsatisfactory, the Principal will make the decision to dismiss the employee or apply an alternative sanction such as compulsory additional training, redeployment into a job of the same grade or redeployment into a job at a lower grade.
- 3.16 The employee will be informed as soon as possible of the dismissal and the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. This notification will then be set out in writing including the employee's right of appeal.

Decision to dismiss

- 3.17 The power to dismiss employees in all TEFAT academies has been delegated to the Principal (with the exception of the power to dismiss the Principal and/or Vice Principal which is the responsibility of TEFAT and the LGB – see 3.12 above).

Dismissal

- 3.18 Once the decision to dismiss has been taken, the Principal will dismiss the employee with notice. A letter confirming this should be issued within 5 working days. In the case of the dismissal of the Principal this action will be taken by the Managing Director of TEFAT.

Appeal

- 3.19 If an employee feels that a decision to dismiss them, or other action taken against them including warnings(as set out above), is wrong or unjust, they may appeal in writing against the decision within five working days' of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and 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, minutes will be taken and a copy sent to the employee.
- 3.20 The appeal will be dealt with impartially and, wherever possible, by a panel of three governors who have not previously been involved in the case in line with the academy's arrangements for who can hear appeals. In the case of an appeal against dismissal from a Principal the appeal will be heard by two directors of TEFAT and a governor who have not been involved in the matter.
- 3.21 The employee will be informed in writing of the results of the appeal hearing as soon as possible.
- 3.22 There is no further right of appeal against the sanction/dismissal within the academy or TEFAT.

Final

4. 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 capability process will be treated confidentially. However, the desire for confidentiality does not override the need for the TEFAT, the Principal and local governing body to quality-assure the operation and effectiveness of the performance management system.

Care should be taken that there should be no discussion of capability cases with individual governors or the LGB as a whole as this would prejudice any subsequent formal capability action.

Consistency of Treatment and Fairness

TEFAT are 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. TEFAT is aware of the guidance on the Equality Act issued by the Department for Education.

Delegation

Normal rules apply in respect of the delegation of functions by the local governing body and Principal.

Grievances

Where an employee 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 Academy's absence policy and the employee will be referred immediately to the occupational health service to assess the employee'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.

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Monitoring and Evaluation

TEFAT, the local governing body and Principal will monitor the operation and effectiveness of the school's performance management arrangements as required. In developing, applying and evaluating this policy we will monitor the impact on different groups of people with protected characteristics in line with the TEFAT's Equal Opportunities policy. This will ensure that what we do is done fairly.

Retention

The local governing body and Principal will ensure that all written capability records are retained in a secure place. It is the manager's responsibility to ensure HR has a copy of all relevant documents. All records will be kept no longer than is necessary in accordance with the Data Protection Act 1998.

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