

Mountjoy School

Appraisal & Capability Procedure – Teachers

February 2022



This is a Dorset Council Policy

Reviewed by: Resources Committee

(Reviewed by Full Governing Board from 2023)

Date: February 2022

Date of next review: February 2023

Signed Date February 2022...

Chair of Governors

Issue Date: July 2017 (previous issue <date>) – Last Checked by GH 18..01.21
Date Adopted:
Signed By:
Approval Committee: Governing Body

Mountjoy School

Appraisal and Capability Procedure for Teachers

This should be read in conjunction with the Appraisal and Capability Policy for Teachers and Guidance documents in the Toolkit.

Advice can be sought from HR at any stage but will usually be sought prior to any formal action being taken.

A flow chart outlining the main steps is at Appendix 2

Appraisal Process

1 Planning

1.1 Setting Objectives

- Setting and agreeing objectives is critical for the effective operation of a performance management system where individual performance is linked to pay progression.
- Objectives should be set for the appraisal period based on CSMART principles (Challenging, Specific, Measurable, Achievable, Relevant and Timed) and in accordance with the principles outlined in the Appraisal and Capability Policy.
- Individual objectives should be aligned with the school's priorities. Reference documents may include the job description, school improvement/business plan and Ofsted report. Normally staff will have no more than three (cross reference with figure in policy document) objectives and workload will be proportionate for part-time staff.
- A meeting should be held with the employee to discuss and agree objectives, clarify the standards against which their performance will be assessed and any identify any development needs/ support available, as soon as practicable after the start of each appraisal period. The employee should be given reasonable notice of the meeting to ensure they can prepare appropriately.
- Where an appraisal cycle/meeting is interrupted by sickness absence, meetings should be re-arranged as soon as practicable upon the employee's full return to work and account taken of the timescale of the remaining cycle.
- As stated in the policy, every effort should be made to reach agreement regarding objectives where a joint determination cannot be made about the objectives, the reviewer will make the determination. Objectives may need to be adjusted throughout the appraisal period to ensure their relevance to priorities and will depend on any emerging issues.

- All objectives should be completed in the autumn term; by **31 October** for teachers and **31 December** for Head Teachers.

1.2 Applying Teachers' Standards

- In accordance with the Appraisal regulations 2013, the performance of all teachers should be assessed against teachers' standards*, which effectively set out a code of good teaching practice and professional conduct. They define the minimum standards expected. Teachers are accountable for achieving the highest possible standards and will need to demonstrate their practice meets the standards defined in part one (teaching) and part two (personal and professional conduct) as a minimum.
- Teachers should be evaluated against all elements set out in the teachers' standards and the school will put appropriate arrangements in place to ensure a fair process of evaluation.
- Teachers' standards also apply to Head Teachers and leadership posts. However, account will be taken of whether/the proportion of time spent teaching in a scheduled week. The External Adviser can provide useful support in relation to this.

*Teachers standards document and any other standards published by the Secretary of State

<https://www.gov.uk/government/publications/teachers-standards>

2 Monitoring

Performance will be monitored as set out in the Appraisal policy (e.g. through observation and on-going professional dialogue between appraiser and appraisee) throughout the autumn, spring and summer terms.

Gathering Evidence

- Judgements related to performance should be supported by evidence
- Evidence required by the appraiser should be clear to make substantiated and evidence based recommendations to the decision-maker
- Evidence should demonstrate a contribution towards:
 - Positive impact on pupil progress
 - Positive impact on wider outcomes for pupils
 - Improvement in specific elements of practice e.g. Planning
 - Work at the school
- Evidence will depend on the nature and scope of the objectives but may include:
 - Class and task observations
 - Reviews of assessment results
 - Internal tracking
 - Moderation within and across schools
 - Pupil/parent voice
 - Head Teacher walkabouts

- In accordance with a Head Teacher's duty to evaluate standards of teaching and learning, it may be necessary for them to collect additional evidence which may include walkabouts, task observation, reviews of assessment results and lesson planning records. It may not be practicable to provide advance notice of these additional monitoring activities.

Observation

- Any class or task observation will be carried out in accordance with the school's observation protocol (see model in Toolkit Appendix 2). Arrangements for observations will be stated in the appraisal planning statement and will include the amount of observation, its primary purpose/particular focus on performance to be assessed, likely duration and when it will take place and who will undertake the observation
- There is no fixed limit now on the length of observations, it is for the appraiser to determine how much observation is necessary to accurately assess performance
- Observations will be carried out by qualified teachers who will be objective, fair and professional evaluations
- Additional observations can be arranged where there is evidence of concern regarding the appraisee's performance
- At least 5 working days' notice will be provided

Feedback

- Verbal feedback will be provided by the end of the following school day where possible, in an appropriate, private environment
- Written feedback will be provided as soon as practicable and normally within 5 working days. The appraisee has the right to append written comments on the feedback document

Ofsted

- Gathering evidence is important for Ofsted purposes also. Ofsted wishes to see evidence of appraisal being used effectively and enabling school improvement as part of the inspection framework; if this evidence is not available it is likely to impact negatively on leadership and management.

3 Review

See guidance on preparing for and conducting Appraisal Reviews is in the toolkit: Toolkit Appendix 3

Mid-year

- A mid-year review meeting may will usually be held.

End of year

- A review meeting must take place at the end of the appraisal year
- Reasonable notice should be provided for the meeting to enable appropriate preparation by both parties.
- Where an appraisal cycle/review meeting is interrupted by sickness absence, meetings/reviews should be re-arranged as soon as practicable upon the employee's full return to

work. There must be no detrimental effect on the employee; the employee's performance will be evaluated on their work up to the point of their absence and account taken of the timescale of the cycle.

- At the meeting, performance will be assessed, any professional development needs will be identified and a recommendation relating to pay made – see 4 – Link to pay progression below.
- Assessment of performance will be on the basis agreed at the start of the cycle and consistent with the evaluation/rating arrangements stated in the Appraisal policy. The overall weight of objectives should be proportionately the same at the conclusion of any objective discussions.
- A written appraisal report must be provided at the conclusion of the process i.e. by **31 October for teachers and 31 December** for Head teachers; the report must record the overall performance assessment and pay recommendation in accordance with the Policy.
- If agreement cannot be reached, especially regarding outcomes of an appraisal meeting the teacher may appeal to the Head teacher (if the Head is the appraiser, the appeal should be to the Chair of Governors) or the Head, to the Chair of Governors
- The overall assessment/performance rating will be subject to a process of moderation
- The final version of the appraisal documentation will be placed on the employee's file, in accordance with data protection principles.

4 Link to pay progression

- The Governing body must set out clearly in the school's Pay policy how pay progression will be determined
- Governors must consider annually whether to increase the salary of teachers and if so what salary to pay within the relevant pay ranges and in accordance with the school's Pay policy
- Where teachers are eligible for pay progression, the recommendation must be made in writing as part of a teacher's annual appraisal report
- Where there has been continued good performance, as defined in the school's Pay policy, a teacher should expect progression to the top of their pay range
- A decision not to award pay progression may be made whether or not the teacher is subject to formal capability procedures
- Again evidence of schools managing the budget and differentiating appropriately between high and low performers will be important for Ofsted; inspectors will seek evidence that poor performance is being rigorously managed and good performance appropriately recognized through the appraisal and pay processes and of a correlation between the pattern of pay progression and improvements to teaching and learning
- Applications to be paid on Upper pay range can be made by any qualified teacher and such applications should include appraisal results

5 Addressing Concerns

- When a teacher is experiencing difficulties support and guidance will be provided through the appraisal process

- Employees are able to seek advice and support from their trade union representatives at any point and should be encouraged to do so at an early stage
- If it is clear that the teacher's personal circumstances are leading/contributing to the difficulties at work support should be offered as soon as possible
- Where the difficulties are attributable to health reasons, there should be a prompt referral to Occupational Health and any potential medical incapability will be addressed separately, in accordance with the Attendance Management Procedure.
- If an appraiser identifies through the appraisal process that the teacher's difficulties are such that, if not rectified could lead to capability procedures the appraiser/line manager/Head teacher/member of the leadership team will as part of the appraisal process meet the teacher to:
 - give clear written feedback to the teacher about the nature and seriousness of the concerns
 - give the teacher the opportunity to comment on and discuss the concerns
 - give the teacher at least five working days' notice that a meeting will be held to discuss targets for improvement alongside a programme of support
 - in consultation with the teacher at the above meeting, an action plan with support will be established (for example coaching, training, in-class support, mentoring, structured observations, visits to other classes or schools or discussions with advisory teachers, review any barriers or reasons for under-performance), that will help address those specific concerns
 - make clear how progress will be monitored and when it will be reviewed
 - Explain the implications and process if no – or insufficient – improvement is made.
- If it has been identified through other sources of information e.g. parental complaint (that is investigated in accordance with any school complaints policy and upheld), that a teacher's difficulties are such that, if not rectified could lead to capability procedures the appraiser/line manager/Head Teacher/member of the leadership team can exceptionally meet with the teacher outside of the appraisal process, informally to cover the above (mirrors meeting/s of appraisal process detailed above – see Procedure Appendix 1)
- The teacher's progress will continue to be monitored as part of the appraisal process and a reasonable time given for the teacher's performance to improve. This will depend upon the circumstances, but will be for a period of 8 weeks, with appropriate support as agreed in the Action Plan, in order that the aim of recovering and improving performance can be achieved.
- If the commencement of monitoring triggers a period of long-term sickness absence, this will be managed in accordance with the school's Attendance Management Policy and a prompt referral will be arranged to Occupational Health. The Appraisal/Capability Procedure will be on hold during any period of sickness absence and phased return to work.
- During the monitoring period the teacher will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate. A review meeting (or transition meeting – see below) will be held at the end of the monitoring period to confirm whether there has been sufficient progress or not.

- If sufficient progress is made such that the teacher is performing at a level that indicates there is no longer a possibility of capability procedures being invoked the teacher should be informed of this at a review meeting and the appraisal process will continue as normal.

6 Transition to Capability

- If no, or insufficient, improvement has been made over this period, the teacher will be invited to a Transition meeting (instead of a 'Review meeting') with the appraiser or Head Teacher to determine whether formal capability proceedings need to be commenced or the appraisal process remains in place.
- The teacher may be assisted by a trade union representative or work colleague and will have at least 5 working days' notice of the meeting.

7 Formal Capability Procedure

- If there has not been sufficient and sustained improvement, despite support provided as set out in the Appraisal Policy or the Informal Capability Procedure, the Formal Capability Procedure should be invoked using a Formal Capability Meeting.

Formal Capability Meeting

- A Formal Capability meeting shall take place to invoke the Formal Capability Procedure and to explain what this entails. The meeting should be between the Head teacher and the employee. The employee can be accompanied by a trade union representative or colleague, but not in the capacity of a practising lawyer and will have at least 5 working days' notice of the meeting. The Head teacher may invite an HR Adviser and L&I Adviser to attend.

At the meeting, the person conducting the meeting will:

- Identify the professional shortcomings
- Give clear guidance on the improved standard of performance
- Explain support available to help performance improvement
- Set out timetable for improvement and how performance will be monitored
- Be advised that whilst they are subject to the capability procedure, normal appraisal arrangements will be suspended
- Issue formal warning that failure to respond could lead to dismissal. (In serious cases, this could be a final written warning)
- Advise of right of appeal - the employee has a right of appeal against the formal warning. They should make their appeal in writing to the Chair of Governors within 10 working days of receipt of confirmation of the warning.

NB: INVESTIGATORY STAGE

It may be necessary to gather facts prior to the Formal Capability Meeting and in cases of gross incompetence, to conduct an investigation for the Hearing.

Outcomes:

- Set out action plan, support and timetable for improvement. Issue written warning
- Recommend medical referral (if appropriate) and adjourn the meeting (pending consideration of medical advice)

- Adjourn to gather further information or to allow time to consider any additional information
- Suspend the employee if appropriate. This will normally apply only in cases of gross incompetence, e.g. if the health and safety of pupils and or colleagues is at risk. Advice will be sought from HR prior to any decision to suspend usually.

Confirm the outcome of the Formal Capability Meeting in writing

- Following the Formal Capability meeting, the decision taken and action agreed should be confirmed to the employee, in writing, within 5 working days of the meeting.
- If further support is agreed, a formal review meeting should be scheduled, within a reasonable timeframe to consider progress, and confirmed to the employee in writing.

Formal Review Meeting (1)

- A Formal Review Meeting shall take place to review progress. The meeting should be between the Head teacher and the employee. The employee can be accompanied by a trade union representative or colleague, but not in the capacity of a practising lawyer and will have at least 5 working days' notice of the meeting. The Head teacher may invite an HR Adviser and L&I Adviser to attend.
- Progress shall be reviewed and one of the following outcomes agreed:
 - If performance has improved to the required standard – no further action under Capability Procedure. Re-start normal appraisal / supervision arrangements
 - Some progress has been made and there is confidence that more is likely, consider extending the monitoring and review period and re-arrange meeting
 - If no, or insufficient, improvement made during monitoring and review period, the teacher may be given a Final Written Warning and advised of their right of appeal. They should make their appeal in writing to the Chair of Governors within 10 working days of receipt of confirmation of the Final Written warning

Confirm outcome of Formal Review Meeting (1)

- A letter must be issued within 5 working days setting out the outcome of the formal review meeting. Where a Final Written Warning is issued, the member of staff to be advised, in writing, that failure to achieve acceptable standard of performance (within the set timescale) may result in dismissal. Advise timescale and standard of improvement. Where further time allowed for improvement, advise of timescale (which should be reasonable) and standard required. The employee should be advised of their right of appeal in writing.

Formal Review Meeting (2)

- This meeting will take place to review the progress of a teacher who has been given a Final Written Warning. The meeting will take place at the end of the timescale set at the Formal Review Meeting.

- The meeting shall be between the Head teacher and the employee. The employee can be accompanied by a trade union representative or colleague, but not a practising lawyer and will have at least 5 working days' notice of the meeting. The Head teacher may invite an HR Adviser and L&I Adviser to attend.

Progress shall be reviewed and one of the following outcomes agreed:

- If performance has improved to required standards – no further action under the Capability Procedure. Re-start normal appraisal / supervision arrangements
- Some progress has been made and where there is confidence that more is likely, consider extending the monitoring and review period and re-arrange meeting
- If no, or insufficient, improvement has been made a Formal Capability Hearing should be arranged and the teacher advised that this hearing will decide whether or not they will be dismissed.

Confirm outcome of Formal Review Meeting (2)

- A letter must be issued within 5 working days setting out the outcome of the meeting. Where a decision is made to proceed to a formal capability hearing the employee will be advised of this and told that a formal letter will be issued setting out the specific allegations to be considered at the hearing and the date, time and place of the hearing, giving at least 10 working days' notice, and of their right of representation.

Formal Capability Hearing

- The Head teacher (or their delegated representative) shall advise the employee in writing of specific allegations to be considered at the hearing and list the possible outcomes, giving at least 10 working days written notice of the date, time and place of the hearing.
- The employee should also be advised that:
 - The case will be heard by a panel of 3 Governors, chaired by the nominated school Governor, advised by an HR Adviser
 - The employee can be accompanied by a trade union representative or colleague but not a practising lawyer
 - The Head teacher (or their delegated representative) will be asked to present their case, call witnesses (where required) and give evidence
 - The employee (or their representative) will be asked to present their case, call witnesses (where required) and give evidence
- Both parties shall provide any papers / evidence they may refer to at the Formal Capability Hearing, at least 5 working days before the hearing is due to take place, for circulation to the Panel.

Decision of the Formal Capability Hearing

- The outcome / decision may be any of the following:
 - Recommend a medical referral (if appropriate) and adjourn the hearing (pending consideration of the medical advice) (see guidance on medical incapability)
 - Recommend additional training or support and / or set targets for improvement with timescales and adjourn the hearing
 - Issue a further final written warning

- Offer alternative employment if appropriate / viable as an agreed outcome or as an alternative to dismissal, subject to a trial period
 - Dismiss (NB: An employee SHALL NOT be dismissed prior to being issued a final written warning, except in cases of gross incompetence)
 - This letter shall be issued by the Local Authority within 10 working days of the decision being taken.
- Dismissal will be with notice
 - The employee will have a right of appeal against the outcome of the hearing.
 - The outcome will normally be announced at the end of the hearing (or, if not possible, by the end of the next working day) and communicated in writing to the employee no more than 5 working days after the date of the hearing. The employee shall be advised of their right of appeal.

Appeal Hearing

- The employee has a right of appeal against the decision of a Formal Capability Hearing. They should make their appeal in writing to the Chair of Governors within 10 working days of receipt of confirmation of the outcome of the hearing.
- Where the employee appeals on the grounds that there was a procedural error or omission during any stage of the Capability procedure, normally the appeal panel will determine, as a preliminary question whether a full new hearing should take place on a date to be arranged.
- The Chair of Governors shall convene and advise the employee in writing of the arrangements for an appeal hearing, giving 10 working days written notice of the date, time and place of the hearing and their right of representation.
- The Appellant will submit an outline statement of their case, in writing, 5 working days before the date of the hearing for circulation to all parties. The employee, Chair of the original hearing and Head teacher will (and HR Adviser may) be in attendance at the Appeal Hearing. The employee will have the right to be accompanied by a Trade Union representative / work colleague.
- At the Appeal Hearing, a panel chaired by a nominated school governor will consider the decision of the Panel that originally heard the case, against the employee's appeal. The Appeal Panel should comprise governors who have no prior knowledge of the case. The Appeal Panel may be advised by an HR Adviser
- The Panel may allow the appeal, dismiss the appeal or impose an alternative remedy.
- Employee and/or his/her representative shall present their case for appeal. The procedure to be followed shall be the same as a Capability Hearing, however the employee will present their appeal case first. The Chair of the original Capability hearing will respond and outline a summary of the reason for their decision. All parties will have the right to ask questions. Both parties will summarise their case, ending with the employee's summary, and all parties will then withdraw leaving the Panel to consider the matter in consultation with the HR Adviser, if present. The employee will be notified of the outcome of the appeal.
- The outcome of the appeal will be communicated in writing to the employee no more than 5 working days after the date of the hearing.

Appendix 1 CAPABILITY PROCEDURE – Informal Stage*

***For use in exceptional circumstances where issues cannot be picked up through the Appraisal process**

1. Where Head Teacher or managers have identified that there are performance issues with a member of staff it is important that efforts are made to resolve such issues informally first, without recourse to the formal procedure.
 2. The Capability Procedure is designed to achieve an improvement rather than to exact a penalty and the informal stage is an important stage in helping an employee to achieve that improvement by means of a structured process.
 3. If issues have been raised via the appraisal process, then the Appraisal Procedure states that a period of support must be provided to that employee before starting the formal stage of the Capability Procedure.
 4. If performance issues have been identified by another route then the informal stage must be followed before commencing the formal stage of the Capability Procedure.
 5. It is the responsibility of the school to ensure that the informal stage has been completed, either through the appraisal process or through the informal process set out here, prior to the commencement of the formal stage, except in cases of gross incompetence where the formal stage should be commenced immediately.
 6. Where Head Teacher or managers identify concerns about a teacher's performance, it may be sufficient to bring these to the teacher's attention so that the teacher can take corrective action to improve performance. However, where under-performance continues, an informal discussion should be held with the employee. The Head Teacher or managers should explore possible causes of the underperformance and provide training and support where needed.
 7. If the employee identifies other issues that are impacting on performance such as medical or personal issues then these should be explored sympathetically and taken into account when agreeing the next steps. A referral to Occupational Health may need to be considered, for example.
 8. Support to the employee can include the following depending on the areas which are causing concern:
 - Training/support on particular areas of the curriculum
 - Assistance with assessment and its use to inform planning
 - Lesson observations and feedback (note that excessive lesson observations can be counterproductive so should be used appropriately)
 - Assistance with lesson planning
 - Regular meetings with manager/Head teacher
 - Team teaching
 - Advice on behaviour management
 - Peer observations
- (This list is not exhaustive.)
9. Following the meeting, there should be a clear action plan on how the teacher will be supported to improve their performance with timescales. Employees should be advised that advice and support is available from their Trade Union.

Appendix 2 – Appraisal and Capability Process Flow-Chart

