

Welcome to the autumn edition of 'Governors' Grapevine', a termly bulletin distributed to all governors to keep them up to-date with any changes and developments in governance.

Inside this Issue...

Performance Management of your Headteacher.....	1
Pupil Exclusion Meetings.....	2
The Role of Members in an Academy Trust	3
Changes to Data Protection Law	4
Financial Accountability and Benchmarking	5
The Education Endowment Foundation	5
Workload Challenge for Staff	6
Amendments to the School Governance Regs	7
Termly Planner	7
Professional Development	7
How to Contact Us	7

PERFORMANCE MANAGEMENT OF YOUR HEADTEACHER/PRINCIPAL

As the appraisal process for all staff, including the Head/Principal, is completed during the autumn term it is timely to note a recent survey undertaken by the National Governance Association on the Head/Principal's appraisal.

The survey raised some common issues:

Appraisal panels are constituted differently depending on the school. Academies, multi-academy trusts (MATs) and maintained schools conduct appraisals differently and those governing in academies should consult their scheme of delegation.

In groups, it is not uncommon for executive leaders to lead the process, with input from the local governing board. In single converter academies and maintained schools, it is usual for three Head/Principal appraisers to be appointed during the summer term who work with an external adviser on the process during the autumn term.

In determining who should be on the panel, focus on skills and experience. In some cases, governors are appointed because of their position on the board (i.e. Chair of governors, vice chair, Chair of committee) or their relationship to the school (i.e. local vicar affiliated to a church school). The NGA believes the Chair should be involved because they are the person who is likely to have the closest dealings with the Head/Principal. Appointing panel members should be a board decision and all (except staff) governors and trustees should have an opportunity to put themselves forward. Regardless of experience, prospective panel members should receive training on performance management.

Objectives should be linked to the school's priorities. It is good practice to set three to five objectives. Governors and trustees should think carefully about the objectives and whether these are broad enough to meet the school's strategic vision. The panel should be explicit about what evidence is required to meet each objective and whether it should be based on statistical data or case study evidence.

Conversations around Head/Principal's workload and professional development are important. The survey highlighted that some appraisers would avoid discussing career development issues with their Head/Principal but the governing board must have these conversations and consider ways to retain a good Head/Principal and meet their career aspirations; it also allows the governing board to plan ahead for succession. A discussion on their workload is crucial for monitoring the Head/Principal's wellbeing which could impact on their performance and decision to remain in post for the long term if not addressed.

There is no reason why panel members cannot share most of the headteacher's objectives with other governing board members. Some governors had voiced concern at sharing what they felt were confidential objectives, set with the Head/Principal, with the rest of the governing board. However, if the objectives clearly relate to the strategic priorities of the school there should be no reason for secrecy.

It is for the board to determine whether the objectives will be shared and this should be made clear to all at the beginning of the appraisal cycle. You could consider making public the strategic objectives but keep confidential to the panel any personal objectives.

The governing board should appoint the external adviser. In the survey, some governors reported that the governing board was involved in the appointment of the external adviser after receiving a recommendation from the Head/Principal. The external adviser's role is to advise the governing board on the legal process, help interpret data and other performance information, and assist with the framing of objectives for the coming year.

The governing board needs to take ownership of the appointment process and ensure that the external adviser has the skills and knowledge to carry out the role. The external adviser also needs to understand performance management as well as education data.

The external adviser is there to give advice, not to make the decisions. The appraisal panel can expect the external adviser to guide them through the process and provide advice; however, it is not appropriate for the external adviser to make any decisions or be involved in pay discussions. The NGA survey found, in one case, the external adviser had met the Head and appraisal panel separately but the Head never actually met the appraisal panel formally! This impeded the panel's ability to make an independent decision and own the process.

PUPIL EXCLUSION MEETINGS

The DfE has issued revised statutory guidance: "*Exclusion from maintained schools, academies and pupil referral units in England*". The new guidance is effective from 1 September 2017 and the majority of changes are designed simply to remove ambiguity. Non-statutory guidance for headteachers and parents has been included in new annexes.

As was previously the case, the governing board must convene a pupil exclusion meeting to consider a permanent exclusion or fixed period exclusion(s) totalling more than 15 days in one term, to consider the case and any representations that the parents wish to make. The committee considering the case has the power to reinstate the pupil (immediately or on a specified date) - and if the pupil has already returned to school the new guidance clarifies that the committee must still consider whether the pupil should be officially reinstated.

Governors must consider robustly the lawfulness, reasonableness and procedural fairness of the headteacher's decision and must by law take into account the DfE statutory guidance, unless there is good reason to depart from it. Governors must ensure that the evidence provided at the meeting gives them sufficient information to be satisfied that:

- there has been a serious breach or persistent breaches of the school's behaviour policy; and
- allowing the pupil to have remained/remain in the school would seriously harm the education or welfare of the pupil or of others in the school.

If the exclusion is upheld the reasons should be clearly recorded in the minutes and the Chair of the meeting should be prepared to explain factors taken into account in reaching the decision. The committee should also issue a clear letter demonstrating that they took into account the statutory guidance.

THE ROLE OF MEMBERS IN AN ACADEMY TRUST

The Members of an Academy Trust are the equivalent of shareholders in a commercial company (although they do not receive dividends). They have statutory rights, as well as rights set out in the Academy Trust's Articles of Association.

The Academy Trust is a charitable company limited by guarantee. Members' liability is set at £10 (in the Articles of Association), in the event of the Academy Trust being wound up and assets not meeting all of the Trust's liabilities.

Members' business can be conducted at Members' meetings or by written resolution. There is no requirement in model Articles of Association for the Academy Trust to hold an Annual General Meeting (AGM); however, the Academy Trust may, if it wishes, decide to hold an AGM each year.

Members' Statutory Rights

- the right to remove Trustees
- the right to amend the Articles of Association
- the right to receive the annual accounts
- the right to appoint the auditors

Members' Rights under the Articles

- the right to appoint Trustees
- the right to appoint and remove Members

The Academies Financial Handbook 2017 states:

"The Department's minimum requirement before entering into a funding agreement is that Academy Trusts have at least three Members, although the Department's recommendation is for Trusts to have at least five Members wherever possible, as this:

- *provides for a more diverse range of perspectives to enable robust decision making and reduces the risks of concentrating power*
- *ensures members can take decisions via special resolution without requiring unanimity.*

*Employees of the Trust **must not** be appointed as Members unless permitted by their Articles of Association. The current model Articles do not allow Members to be employees.*

The Department's view is that the most robust governance structures will have a significant degree of separation between the individuals who are Members and those who are Trustees. If Members also sit on the Board of Trustees this may reduce the objectivity with which the Members can exercise their powers. The Department's recommendation is for a majority of Members to be independent of the Board of Trustees.

As responsibility to conduct the business of the trust in accordance with company and charity law sits with the Trustees, Members should be 'eyes on and hands off' and avoid compromising the Board's discretion in exercising its responsibilities. However if the governance of the Trust by the Board of Trustees becomes dysfunctional the Members will have a strong interest in ensuring the Board has sufficient plans to address the issues.

CHANGES TO DATA PROTECTION LAW AND THE IMPACT ON SCHOOLS AND ACADEMY TRUSTS

Changes to the rules on data protection are expected to be introduced with effect from 25 May 2018. The changes will affect how schools and academies collect, store and share information about pupils and employees. It is important to be aware of and prepare for the changes now.

Some of the most significant changes which will affect schools are as follows:

- **Obligation to obtain consent:** - consent must be specific, freely given, informed and unambiguous. Pre-ticked boxes, opt outs and implied consent will not be enough. For employees, automatically including a consent clause as part of the employment contract will not be sufficient. When processing personal data for multi-purposes, each purpose must have consent. An individual has the right to withdraw their consent at any time.
- **Right to access information:** - individuals have the right to access their personal information (a data subject access request), which must be provided without delay within no more than one month from receipt of the request (reduced from 40 days) free of charge (previously a £10 charge could be requested).
- **Obligation to display privacy notices:** - privacy notices will need to include more detail including information about who data might be passed to and how to complain. Where services are offered directly to a child, the privacy notice must be written in a clear, plain way that a child will understand.
- **The right to be forgotten:** - individuals will have the right to request that organisations delete their personal data in certain circumstances (their data is no longer necessary for the purpose for which it was originally collected).
- **Legitimate interest justification for data processing:** - schools and academies may currently process personal data about pupils and employees on the basis that it is necessary for the purposes of the legitimate interests of the school or academy trust, and that the processing does not prejudice the rights, freedoms or legitimate interests of the individual. Changes to the law make specific reference to the need to consider the interests and rights of children, where their data is being processed. Even if the legitimate interest justification could be relied on, any decision to process children's data would need to be carefully documented and a risk assessment conducted.
- **Data breach notification:** - organisations must inform the Information Commissioners Office (ICO) of all data breaches without undue delay and where feasible within 72 hours, unless the data breach is unlikely to result in a risk to the individuals concerned. If the breach is likely to result in high risk to individuals, organisations are required to inform them without undue delay.
- **Increased fines:** - fines can be imposed up to a maximum of twenty million euros or four percent of turnover (whichever is the greater).

What should schools and academy trusts be doing to prepare?

- Familiarise yourself with the changes.
- Conduct an internal audit – develop an understanding of how and what data is collected, what happens to it, who has responsibility for it and what it is used for.
- Review policies and guidance.
- Develop a response plan.
- Ensure staff are trained. Most breaches are due to human error so effective training of staff is a key part of minimising risk.

FINANCIAL ACCOUNTABILITY AND BENCHMARKING

Governing boards are responsible for overseeing the financial performance of the school/trust and making sure its money is well spent. Questions they need to ask to fulfil this responsibility include:

- Are resources allocated in line with strategic priorities?
- Does the organisation have a clear budget forecast, ideally for the next three years, that identifies spending opportunities and risks and how these might be mitigated?
- Are there sufficient reserves to cover major changes such as restructuring or identified risks?
- Does the organisation make efficient and effective use of its budget?
- How could better value for money be achieved?
- Are budgets based on curriculum planning and the organisation's priorities?
- Is there compliance with basic procurement rules?
- Does the organisation collaborate with other schools to generate efficiencies through pooled funding, joint procurement and the sharing of staff, functions, facilities and technology?

Boards will receive regular internal financial data, but also need to benchmark their performance against other schools. This can be done through the DfE's Schools Financial Benchmarking site (part of the DfE's wider Schools Financial Health and Efficiency pages), which has recently been updated. The site allows schools and academies to compare their performance data and spending levels with schools that share similar characteristics such as pupil numbers, school phase/type or proportion of pupils in defined groups (eg special educational needs/free school meals/English as an additional language).

Schools can choose to compare themselves with DfE pre-selected comparators or use the functionality of the system to choose their own comparators.

The data available via the site is intended to initiate a discussion and questions, rather than instigate an immediate reaction.

THE EDUCATION ENDOWMENT FOUNDATION (EEF)

The EEF is an independent charity, established in 2011 by the Sutton Trust with a founding grant of £125 million from the DfE. The charity is dedicated to breaking the link between family income and educational achievement, ensuring that children and young people from all backgrounds can make the most of their talents.

The EEF aims to raise the attainment of 3-18 year-olds (particularly those facing disadvantage), develop their essential life skills and prepare them for the world of work and further study. It does this by generating evidence of what is effective in improving teaching and learning and funding trials of high-potential programmes and approaches, with the aim of supporting an evidence-informed teaching system that provides better outcomes for children and young people.

EEF guidance reports offer clear and actionable guidance for teachers on a range of priority issues. Each report includes practical, evidence-based recommendations developed by reviewing the best available international research.

The DfE suggests that governing boards should ask themselves whether the (EEF) Toolkit has been used to inform pupil premium spending decisions and whether the impact of decisions and interventions is monitored using tools such as the EEF DIY evaluation guide -

[https://v1.educationendowmentfoundation.org.uk/uploads/pdf/EEF_DIY_Evaluation_Guide_\(2013\).pdf](https://v1.educationendowmentfoundation.org.uk/uploads/pdf/EEF_DIY_Evaluation_Guide_(2013).pdf)

WORKLOAD CHALLENGE FOR STAFF – WHAT DOES THIS MEAN FOR YOUR SCHOOL?

At the beginning of a new school year, governing boards should be reminded of the challenges that staff can face in the coming months and consider whether any action should be taken to provide assistance to staff at the school.

A key responsibility of a governing board is to ensure the health and wellbeing of staff working in their schools is considered and if any school policies or responsibilities are contributing to additional work for staff.

In 2014, the DfE launched its workload challenge-this involved seeking information from teachers about the challenges that they faced; from the responses received the DfE identified three key issues; marking, planning and resources; and data management. It then established three independent review groups to look in more detail at the issues and produce recommendations. These were published in March 2016.

From a DfE biennial workload survey completed in February 2017, results collated indicated that there is still further work required to address workloads. It was identified that in a specific week (including a weekend), the average weekly working hours for those in the profession were:

- 54.4 hours for classroom teachers and middle leaders.
- 60 hours for senior leaders.

The DfE has published an action plan following the release of the latest results which included the recommendations of the review groups and offering schools targeted support. Revised staff advice and a guide to flexible working are also available.

A key find from the review group was that extensive marking was taking precedence over all other feedback. It was also established that Ofsted was a contributory factor in relation to the rise of marking. Following the release of the workload challenge, Ofsted has worked to dispel these myths; a document is available from them which outlines their expectations as part of inspections.

It should be noted that marking policies are operational and should be dealt with by professional leadership; the governing board should not be checking books to ensure that the marking policy is being adhered to. Governing boards could ask questions in relation to the policy and plans in place for achievement.

When looking at planning and resources, the DfE identified that the creation of a lesson plan does not always contribute to the quality of a lesson. A suggestion could be that governing boards could ask the leadership team what expectations are in place for staff for planning and what evidence could be provided to demonstrate that lesson planning had made an impact on pupil outcomes.

In relation to data management, some governing boards demand high quality data to enable them to carry out their three core functions, however, you cannot set strategic direction if you are unaware of where the school is currently, or hold leadership to account for performance if data is not provided to support this. Data should be collected and presented if it is fit for purpose; if it is not, it is simply collecting data for the sake of it.

Governing boards can have an impact on the retention of existing staff by considering teachers' workloads; this can be carried out by governors asking for feedback from staff.

AMENDMENTS TO THE SCHOOL GOVERNANCE (CONSTITUTION) (ENGLAND) REGULATIONS 2012

Following amendments to the [School Governance \(Constitution\) \(England\) Regulations 2012](#), the Department for Education (DfE) has released an updated version of the accompanying [Statutory Guidance](#).

Governing bodies (including those of federations) and local authorities must have regard to the Statutory Guidance when carrying out certain functions relating to the constitution of governing bodies in maintained schools.

Key changes in the updated guidance are:

- Additional material required on the Governance Database – **paragraph 35, page 12**
- New guidance on the power to remove elected and staff governors – **section C.5, pages 23-24**

TERMLY PLANNER – AUTUMN 2017

5 October	Statutory Return	Autumn school census
31 October	Performance Management	Teachers covered by performance management regulations to receive a written appraisal report by this date, according to DfE model policy for performance management.
2 November	Statutory Return	School workforce census day
31 December	Performance Management	Headteachers covered by performance management regulations to receive a written appraisal report by this date, according to DfE model policy for performance management.
31 December	Statutory Return	Deadline for audited academy accounts and auditor's regularity assurance report to be submitted to the Education and Skills Funding Agency.

PROFESSIONAL DEVELOPMENT

IPC Services is committed to ensuring that associated staff are well trained and kept updated.

Events attended:

Summer 2017 - NCTL Clerk's Accreditation – Eunice, Lisa and Wendy

27 April\29 June 2017 – Regional CPD Group day - Mary

11 May 2017 – Regional Co-ordinators meeting - Mary

HOW TO CONTACT US

Tel: **01482 661925** from **6.00am – 6.00pm 7 days a week** (except Christmas day!!)

Email addresses: lisa.bell@ipc-services.co.uk michelle.johnson@ipc-services.co.uk
eunice.evans@ipc-services.co.uk tony.hammond@ipc-services.co.uk
gabby.bradford@ipc-services.co.uk wendy.watson@ipc-services.co.uk
mary.harker@ipc-services.co.uk www.ipc-services.co.uk