

# **Review of Employee Performance and Conduct (EPAC)**

## **Feedback to the NSW Department of Education**

**May 2019**

**Prepared by: Federation of Parents and Citizens Associations  
of New South Wales**

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## Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful to Department of Education (the Department) for this opportunity to contribute to the Review of Employee Performance and Conduct (EPAC). P&C Federation supports the position of individual educational and developmental needs met by a range of differential services expressed through appropriate and well-planned curricula, programs and environments conducted by sensitive and well-trained personnel in conjunction with parents<sup>1</sup> and families.

The core belief of P&C Federation is that the education of our children and youth is the most fundamental means of ensuring individual and collective success and, as a result, our greatest national resource.

In our submission, we are guided by the same stated priority of the Department – to enhance outcomes for all students, to improve teaching quality, to innovate for the future and to work more effectively. We emphasise that as with all Department policies, the central priority of this policy must be the welfare of each individual student.

### **P&C Federation Response to Review**

We emphasise the following concerns:

- 1. The independence of EPAC needs to be assured.** We question the appropriateness of EPAC sitting within the Corporate Services Division of the Department, as we fear this is not far enough removed from the Department's line. This raises serious concerns about conflict of interest, procedural fairness and transparency. With the current structure involving Directors, Educational Leadership being the main arbiters of complaints, there is nearly always a perceived conflict of interest as colleagues are often reviewing complaints about other colleagues or friends.
- 2. There are too many deterrents to complaints.** There are several factors that deter parents and possibly staff from raising complaints. A significant factor for staff is that school principals are responsible for refereeing teachers' job applications, which renders teachers less likely to raise a complaint for fear of damaging their career prospects. There is no review of this refereeing process to ensure it is fair and transparent. For principals the prospect of having to deal with a long and complex performance issue is often a significant deterrent to proceeding resulting in underperforming teachers being able to continue to impact on the learning and welfare of students. For parents there is a common and often justified fear that raising a complaint will result in their child and/or themselves being vindictively targeted by the principal and/or staff under the direction of the Principal. Just as common is the fear that raising a complaint will have no impact on the

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<sup>1</sup> "Parent" refers to anyone with legal care of a child, such as a parent, carer or legal guardian

current situation resulting in parents putting up with situations where their child's education and/or welfare continues to suffer. It is noteworthy that while section 1.4 of the Department's Complaints Handling Policy states that "Staff who raise a complaint must not be subjected to reprisal action", there is no such explicit protection provided to families or parents and their children.

A result of this is that staff who are undermining the outcomes and welfare of students are not dealt with effectively, to the detriment of students.

- 3. Schools do not inform parents how they can make a complaint.** Many parents are unaware of how to raise a complaint with the Department. This is evident in the fact that P&C Federation was approached to circulate information on complaints processes to parents, despite this information was also issued to all principals and it would normally fall to principals to distribute such information to their school communities. The only other way parents may be gain information is by sifting through the Department's website, which is not personable or consistent with the Department's stated principle of treating parents as partners. This is particularly a problem if parents wish to raise a complaint about a school principal, as the process to follow is not widely circulated. It is often the case that parents are completely unaware that there is a complaints process and that they are entitled to raise one. Many schools often fail inform parents of this policy while concentrating heavily on others that keep parents in check. This can cause significant problems in culturally and linguistically diverse (CALD) communities where language barriers and social isolation can compound the lack of information. Some fear that if they report any incident, their residency status may be jeopardised.

A result of this is that school principals and other staff who are undermining the outcomes and welfare of students are not dealt with effectively, to the detriment of students.

- 4. The Department does not communicate satisfactorily.** Among the most common problems we encounter in the Department's complaints processes is lack of communication. Parents making a complaint often receive no acknowledgment that the complaint was received and is being processed. Sometimes the outcomes of complaints are not communicated at all or are communicated in an untimely way and only after the complainant has spent effort to chase up the matter. Sometimes complaints are dismissed due to a particular step not being taken or a particular box not being ticked, and sometimes complaints are dismissed for reasons that are not clearly explained. Verbal complaints are often not investigated at all – we are aware of many instances when a matter is raised verbally and no action is taken. Overall the complaints process is not transparent and mostly predictable in its outcomes.

As the outcome of a complaint could have serious impact on the learning and welfare of a child, a class or the whole school, the Department needs to deal with complaints in a more effective, transparent and compassionate manner.

5. **It is unclear how EPAC measures its effectiveness.** We note that EPAC defines staff efficiency as “empowering leaders to manage underperformance so the department’s workforce is of the highest calibre”, and as “building capacity of and collaborating with educational and school leaders and managers to respond promptly and effectively to under performance.” However, without any defined KRAs or KPIs, we fail to see how underperformance is effectively defined, identified and managed to the point where staff are contributing to the improvement of every student in their school, and this needs to be supported at a minimum by an ILP.
6. **Lack of consultation with parent stakeholders.** It is disappointing that the stakeholders consulted apparently did not include any parent organisations. Parents are at least as crucial as teachers to a child’s upbringing, and therefore should be central to any

**Suggestions for reform of the process:**

- Complaints about staff members must be handled outside line management level, and therefore should not be handled by staff reporting to the Deputy Secretary School Operations and, most importantly, not by school-based staff. This is to ensure that the subsequent process is not overly burdensome on school staff (particularly school leadership staff) and to ensure that the investigation and any decisions are not influenced by relationships at the school or line management level. We strongly suggest that any complaint about a staff member whether from a parent/guardian, student or another member of staff, should be immediately referred to EPAC. EPAC in turn should report directly to the Department Secretary.
- EPAC should be adequately staffed and resourced in both numbers and geographical distribution to be able to react promptly. The Department’s most recent figures show there are 90,687 professional staff employed by the Department, 65,714 of whom are school teachers.<sup>2</sup> If even 0.5% of those teachers are at any given subjects of complaints and/or subject to performance improvement programs at any given time, that amounts to almost 330 people, and that number grows when the Department’s non-teacher staff are considered. There must be sufficient EPAC investigators to handle the issues of potentially hundreds of people.<sup>3</sup> We suggest there should be at minimum

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<sup>2</sup> NSW Department of Education. *2017 Annual Report*. April 2018. Table 8

<sup>3</sup> We consider this is a conservative estimate – the Department’s 2017 Annual Report (page 88) noted the online tool Feedback Assist was launched in October 2017, and that in approximately the following six months, 98 complaints were received via this tool. That does not account for the complaints received through more traditional channels.

a 1:100 ratio of EPAC investigators/Department staff, to ensure that EPAC has sufficient investigators to handle potential complaints and provide oversight of performance improvement programs, and thereby reduce the impact on school staff performing their day-to-day tasks. Local school leadership should only be involved in the process of compliant investigation and oversight of performance improvement programs to provide input. Directors, Educational Leadership should not be involved at all in the complaints process but may be involved in supporting any remedial action required.

- Where the matter involves allegations of serious misconduct and/or involves a senior member of the Department (especially about someone at a school principal/executive level or higher), it should be handled by a highly senior EPAC investigator. When someone wishes to appeal the outcome of any EPAC investigation, EPAC's internal process should facilitate a process whereby it can be internally investigated, further appeals after that to be referred to an independent third party at the appellants cost. This would provide assurance of fairness and transparency, along with appropriate levels of skilled investigators.
- A comprehensive performance framework needs to be established and staff trained to understand the expectations of the framework. Simple and clear boundaries should be developed to help ensure that staff conform and that transgressions are easier to identify and deal with.
- Clear definitions of underperformance also need to be developed with staff understanding the consequences of underperformance. Significantly greater resources need to be given to identifying and supporting performance improvement than currently exists.

For matters that are referred to EPAC, we suggest the following process.

1. EPAC should be able to initiate investigations without a complaint being received. An investigation could be triggered by analysis of data, media reports about a school or teacher, or social media activity either by or referring to a member of staff.
2. EPAC, upon starting work, should review the staff members personal file and any correspondence (email or otherwise) concerning the teacher. Any investigation should at least include conversations with any parent, staff or community member who has made a complaint any time over the previous several years.
3. No teacher about whom a complaint has been made regarding their ability to teach or provide a safe environment should be left unsupervised. Until cleared, a teacher that is the subject of a complaint should have their work monitored by a competent member or

members of staff, or a suitable person from EPAC, to ensure students' learning, extracurricular activities and/or welfare is not being impacted.

4. Once it has been established, by EPAC, that a complaint against a teacher's ability to teach is valid and can potentially be addressed through an improvement program, EPAC should arrange a performance monitor, who takes primary responsibility for the conduct of classes previously taught by the underperforming teacher. Dependent on the extent to which the underperforming teacher is capable of supervising and teaching a class, the performance monitor should be present and directly supervise and observe the underperforming teacher as part of that teacher's improvement program. The performance monitor should determine the extent to which the underperforming teacher should participate in the education of students, based on the degree to which the underperforming teacher is able to effectively teach and their willingness and progress in improving their teaching ability. Performance monitors must be highly capable teachers capable of both teaching students and of improving the teaching abilities of other teachers. Specific training and professional development will be required for these personnel.

5. Teacher performance improvement programs should be completed over a period of no more than 1 full term of teaching (i.e. 10 weeks). Any longer than this is:

- an unacceptable waste of resources in respect of a member of staff who should by rights be competent in the first place; and
- an unacceptable continuing disruption and/or detriment to the students affected.

Teachers who fail to meet the requirements of the performance improvement program shall be withdrawn from the classroom and offered either a more substantive performance improvement course (3-6 months) or the option to resign.

6. Teachers needing to improve their performance should not be able to evade or lengthen the performance improvement process by taking leave.

7. If it is established that a teacher's performance is unlikely to be improved to a suitable level, either at the initial assessment or at any point through the conduct of a performance improvement program, the teacher concerned should immediately be deregistered from teaching in New South Wales and have their employment terminated.

8. A teacher who is offered the option of a performance improvement program should also be offered the option of foregoing the improvement program in return for immediate resignation with, for example, one term's pay and no longer being registered to teach in New South Wales.

9. When a complaint is being investigated, the person who is the subject of a complaint may have the involvement of a support person. If it is established that the complaint is justified and the staff member should be subject to an improvement, there should be no involvement by a support person in the performance improvement program as the accountability for the outcome of teaching and student supervision lies strictly with the Department.
10. Once a claim of underperformance has been established, and irrespective of other remedial actions relating to the responsible teacher (such as a performance improvement program and/or termination), the learning status of the affected students should be assessed and the need for remedial teaching of all affected students established and any remedial learning implemented immediately. No student should have their education compromised by having been taught by an unacceptably poor teacher. Additional staff may need to be assigned to achieve this remedial learning, with EPAC being responsible for this in conjunction with the school's leadership team.
11. After any investigation and/or after the conclusion of any resulting action, an assessment should be made by EPAC of the efficacy of the process, such as whether the deficient performance was detected and responded to on a timely basis, whether any warning signs were missed or should have been detected earlier, with the result including any recommendations for either the Department as a whole, the school or specific staff. At the extreme end, this could result in an investigation of a person who, for example, knew or should have known of a performance issue but declined to act or tried to hide a performance issue.

All additional costs associated with any of the above should come from EPAC's budget rather than that of the school. This is to ensure that the school is not deterred from identifying inadequate staff due to a potential cost impact.

All of these policies should be regularly reviewed, with P&C Federation and all other relevant stakeholders, to ensure they are consistent with the best interests of all students. All such policies must also be freely available and accessible for everyone in the school community, for instance, by requiring them to be published on every school website.