

8.19 Employee Counselling and Disciplinary Procedures Policy

The service acknowledges that, from time to time, employee behaviour and performance may fall below the expected standards as detailed in the specific job description and orientation/induction processes. The purpose of this policy is to establish an equitable and consistent approach to addressing unsatisfactory work performance and/or conduct by:

- Ensuring counselling takes place to reinforce the expected performance or conduct standards.
- Establishing a process under which warnings may be issued and discussed; and
- Providing for disciplinary action when performance or conduct does not improve.



Relevant Laws and other Provisions

The laws and other provisions affecting this policy include:

- *Duty of Care*
- *Privacy Act 1988 and Regulations 2013*
- *Fair Work Act and Regulations 2009*
- *Prevention of Workplace Harassment Advisory Standard 2004*
- *Relevant Industrial Award or Agreement*
- *National Quality Standard, Quality Area 4 – Staffing Arrangements; 7.2 Effective leadership builds and promotes a positive organizational culture and professional learning community*
- *Policies: 8.1 – Role and Expectations of Educators, 8.5 – Volunteers, 8.6 – Employee and Volunteer Grievance, 8.8 – Employee Performance, Review and Management, 8.9 – Employee Code of Conduct, 8.10 – Employee Orientation and Induction, 8.17 – Fit for Work, 10.8 – Information Handling (Privacy and Confidentiality)*



Procedures

Definitions

'Counselling': The discussion and analysis of issues which affect an employee's conduct and/or work performance. Counselling is used to improve an employee's performance where their behaviour or performance does not meet required expectations.

'Unacceptable performance': Is when the employee's performance remains unacceptable following a reasonable period of performance improvement.

'Misconduct': When an employee breaches their obligations under their contract of employment. Examples of misconduct may include but are not limited to:

- Breaches of policies, codes of conduct and other reasonable instructions.
- Unauthorised absence from work.

'Serious Misconduct': When an employee breaches their obligations under their contract of employment to an extent that it is reasonable to discontinue their employment. Examples of serious misconduct may include but are not limited to:

- Dishonesty and fraud.
- Bullying, fighting or abusive behaviour;
- Sexual harassment.
- Drunkenness and drug use.
- Acting in an unsafe manner.
- Misusing confidential information.
- Damage or misuse of service equipment and resources.
- Breach of any act or legislation relating to their employment.

'Disciplinary action': Action taken by the organisation to deal with any actual, alleged, or perceived breach of legislation, policies, codes, or other standards of work performance and/or conduct.

Service responsibilities

The service acknowledges that the principal objective of counselling employees is to draw allegedly inappropriate behaviour and/or unacceptable performance to the attention of an employee and, where proven, explain to the employee the potential and/or actual consequences of that performance and/or behaviour and assist them in achieving and maintaining behaviour and performance that is consistent with the services policies, procedures, and practices.

The service has developed disciplinary procedures designed to address employee conduct that impedes the operation of the service whilst ensuring all parties receive procedural fairness and due process in a timely and effective manner. Service management reserves the right to amend procedures depending on the facts of each situation and the nature of the offense.

The service will treat all allegations of unacceptable performance and/or misconduct as serious and take prompt action to address identified issues, irrespective of whether they are minor or more serious. If action (as per the counselling and disciplinary procedures) cannot be taken immediately, the employee concerned should be advised as soon as possible of when and where that follow-up action will take place.

The Approved Provider/Coordinator may conduct a workplace investigation in cases of allegations of serious misconduct. The employee accused of the allegation will be informed of the matter verbally and in writing and advised that they may be stood down on full pay until the workplace investigation is completed. The workplace investigation will include the gathering of relevant information, written statements, interviews, documents, and other records. Other employees may be required to be interviewed as part of the investigation. Further disciplinary action will depend on the results of the investigation.

All persons involved with the counselling and disciplinary processes must always keep confidentiality. The employee may choose to discuss the matter with a nominated support person and bring them to any interview or counselling session conducted under the process's formal components.

The service counselling and disciplinary procedures will have three distinct, but not necessarily sequential components:

- Informal counselling (face to face feedback).
- Formal counselling; and
- Disciplinary procedures (including warnings).

The decision as to which of the three components initially apply will be based on the seriousness of the employee's behaviour and/or performance and will depend on the facts and circumstances as identified by, or conveyed to, the service Coordinator.

Where the service Coordinator has not identified the behaviour and/or performance issue firsthand, sufficient facts must be gathered to determine the seriousness of the behaviour and the appropriate action. Direct observations may be undertaken by the service Coordinator to determine validity of allegations. Immediate action must be taken if there are serious concerns about an employee's conduct. As part of the process of establishing the facts, the service coordinator may:

- Assess relevant documentation.
- Interview person/s who may (or should) have knowledge of the employee's behaviour; and
- Document what has occurred.

Informal counselling

Informal counselling and/or face-to-face feedback given by the Approved Provider/Coordinator will normally occur when the employee's behaviour is such that formal disciplinary action is not appropriate.

Where it is established during the informal discussion that the behaviour expectations have not been met, feedback given must be constructive and delivered to encourage the employee to achieve and maintain expected behaviour/performance standards.

If the discussion confirms that misconduct has occurred, the employee should be:

- Advised of how the behaviour and/or performance is inconsistent with the service expectations and their employment contractual obligations.
- Provided with an opportunity to respond to the concern and to raise any other matter that they consider relevant; and
- Engaged in jointly identifying a plan of action to improve performance standards or outline the appropriate conduct expected.

After the informal counselling session, the service the Approved Provider/Coordinator will keep a diary note of the discussion and where appropriate, plan a subsequent discussion with the employee to review the behaviour or performance.

Formal counselling

Formal counselling will normally occur when:

- The employee has previously been counselled informally but behaviour has not improved to the expected standard (unacceptable performance);
- The employee's misconduct is such that formal counselling is appropriate.

The formal counselling session will take place as soon as possible after the behaviour and/or performance issue is identified with the employee being advised in writing of:

- When and where the interview will take place.
- The matter/s that will be discussed (i.e. specific details of the alleged unacceptable performance/misconduct);
- Their opportunity to respond; and
- The opportunity for them to bring a support person/observer to the interview.

At the meeting, the Coordinator and employee will review and discuss the allegations of unacceptable performance and their responses to these allegations as well as any additional incidents, information and prior relevant corrective action plans.

At the end of the formal counselling session, the coordinator will complete an employee counselling report, signed and dated by the employee as a true and correct record of discussions, agreed actions and timeframes. A record of the meeting will be provided to the employee by way of a letter confirming:

- The issue of concern.
- Any assistance/support to be provided (if relevant);
- Date and time for subsequent meeting; and
- Disciplinary action taken with the possibility of further action should the required expectations for behaviour and/or performance not be achieved.

Disciplinary action

Disciplinary action may be taken where the alleged misconduct and/or unacceptable performance continues or is of a serious nature. Disciplinary action may include written warnings and/or termination of employment.

Written warnings

The purpose of a written warning is to emphasize to the employee that their misconduct or performance is unacceptable and to make clear that further disciplinary action may be taken. A written warning may be given to an employee when:

- The employee has previously been through the formal counselling process and has not met the required standards or expectations; or
- The employee's performance or misconduct is of a serious nature and requires immediate action.

Written warnings must also detail the support and/or training provided to the employee and the expected timeframes for review of the identified issue/s.

Show cause meeting

This meeting's purpose is to ask the employee to show cause as to why their employment should not be terminated. Depending on the circumstances, the employee may be stood down on full pay until a meeting is scheduled. Employees will be required to respond, in writing and prior to the scheduled meeting, addressing the allegations and their reasons why employment should not be terminated.

Requests for an employee to attend a show cause meeting shall be made in writing outlining:

- When and where the meeting will take place.
- Who else will be involved in the meeting (i.e., management representative)
- The specific issue that will be discussed (i.e., alleged unacceptable performance /misconduct).
- Their opportunity to respond; and
- The opportunity for them to bring a support person/observer to the meeting.

At the meeting the management representative, Coordinator and employee will review and discuss the allegations and their responses to these allegations as well as any additional incidents, information, and prior relevant corrective action plans. A decision surrounding the employee's continued employment will be made at this meeting.

Employees terminated because of misconduct or unacceptable performance will be given notice as per their Industrial Award and will receive any outstanding leave and/or TOIL entitlements (if applicable). Terminated employees will be issued with a statement of service.

Management reserves the right to seek independent industrial relations advice to assist in this process.

Instant dismissal

Serious misconduct (as identified at the beginning of this policy) will not be tolerated and may result in the instant termination of employment.

Management responsibilities

The Currumbin State School P&C Association is responsible for ensuring that the service adheres to the disciplinary process and that reasonable support is provided to ensure the process is fair and that the employee has every reasonable opportunity to change the unsatisfactory pattern of their behaviour.

At each stage of the disciplinary process, management may obtain advice, particularly in preparing written warnings and/or termination. This process shall be implemented within the context of the appropriate industrial awards and in accordance with relevant State and/or Commonwealth legislation.

DATE DEVELOPED	DATE RATIFIED	DATE REVIEWED	DATE RATIFIED
August 2018	August 2018	23.06.2021	October 2021
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