



Oakleigh Grammar

Policy Document Name	Unsatisfactory Work Performance and Misconduct Management
Date Ratified by Board of Management	August 2023
Date for Review	August 2026

1. Purpose:

The objectives of this policy are to:

- Address matters under this policy efficiently and with minimal disruption to the workplace.
- Improve the standard of an employee's performance and/or correct an employee's conduct where Oakleigh Grammar deems this appropriate or necessary.
- Offer a range of supports to assist both line managers and employees with the processes under this policy.

2. Application of the Policy

The policy may be varied from time to time by Oakleigh Grammar in line with operational practice. This policy does not diminish any rights under legislation, an award, and EBA, or the contract of employment and operates in conjunction with other School policies.

This policy may be used as guidance for the process or manner in which Oakleigh Grammar may discipline an employee because of their poor performance or inappropriate conduct in any circumstances that can be connected to, or impact upon, Oakleigh Grammar.

This policy applies to all permanent employees and fixed-term employees engaged for a period greater than 6 months. This policy does not apply to employees during the minimum employment period prescribed by the *Fair Work Act 2009* (Cth).

3. Principles

The following principles apply to the management of underperformance and misconduct:

- Underperformance and misconduct are not acceptable and employees are required to share responsibility for improving performance and conduct, and to participate in the processes established in these procedures.
- Heads of Schools and managers are to address instances of underperformance in a timely and appropriate manner, in accordance with these procedures.
- The primary goal of the underperformance and misconduct processes is to rectify underperformance and misconduct issues and ensure the employee's future work performance and conduct are maintained at a satisfactory level.
- Employees and managers have a right to be treated fairly and without bias, and are to be informed of the reasons for a decision which affects them.
- Employees involved in the underperformance and misconduct processes must be provided with sufficient notice of any meetings.

- Employees involved in the underperformance and misconduct processes are entitled to support and/or representation at all stages of the processes, and are to be advised of this right.
- All matters arising during the process are to be kept in the strictest confidence.

4. Roles and responsibilities

Employees

All employees are responsible for:

- Complying with the Staff Conduct and Professional Boundaries Policy.
- Performing at a level of work performance that meets the expectations and required standards of the role to which they are assigned.
- Being accountable for their work performance and conduct.
- Participating in discussions about their work performance and conduct.
- Cooperating in any unsatisfactory work performance or misconduct processes described by this policy to resolve matters efficiently and fairly.
- Managing appropriate confidentiality.

Line managers

Line managers are responsible for:

- Promoting adherence to procedural fairness principles when addressing performance and conduct issues.
- Outlining required standards and expectations of employees.
- Offering reasonable support to assist employees to meet the required standards and expectations.
- Raising any identified work performance or conduct issues with employees reporting to them, as soon as reasonably practicable, and offering them an opportunity to respond.
- Making employees aware of the consequences of unsatisfactory work performance or misconduct.
- Maintaining appropriate confidentiality.

HR Officer

HR Officer is responsible for:

- Providing advice in relation to matters covered by this policy.
- Assisting employees, Heads of School and line managers to understand their roles and responsibilities and identifying potential support options that may be available.
- Maintaining appropriate documentation in relation to formal work performance or conduct processes.
- Maintaining appropriate confidentiality.

5. Performance Management Procedure

5.1 Informal attempts to address unsatisfactory performance.

When supervision is carried out appropriately and in a reasonable way, it constitutes 'informal attempts to address an employee's unsatisfactory work performance.'

Before starting the formal process, the employee's line manager should make sure that the following matters have been considered:

- The employee has been made aware of the standards and expectations required of them in the role to which they are assigned.
- Personal or organisational factors affecting the employee's work performance.

- Informal attempts have been made to address an employee's identified work performance issues.
- The reasons for the unsatisfactory work performance have been sought.
- Alternatives to a formal performance management procedure have been explored.

5.2. Formal procedure

Where the informal processes have failed to resolve unsatisfactory performance issues, the School may implement a formal performance management procedure.

A formal performance management procedure is in three stages and must be followed sequentially:

- 1. First Stage – formal counselling:** The first stage of the formal management of unsatisfactory work performance is formal counselling of the employee, followed by a reasonable time period for the employee to improve.
- 2. Second stage – formal written warning:** If the employee's performance has not improved within the reasonable time period following formal counselling, the employee will be given a formal written warning which commences the second stage.
- 3. Third stage – final warning:** If the employee's performance has not improved within the reasonable time period following the formal written warning, the employee will be given a final warning. This commences the third stage of the process.

In the event that the employee's performance has not improved within the reasonable time period following the final warning, the School will determine whether the outcome is for the employee to be assigned to a lower grade or value range or have their employment terminated.

The process outlined below is circular and repeats steps one, two and three for each stage until after a final warning in the third stage has been issued. At the end of the process following a final warning in the third stage, if the employee's performance has not improved and they have been given an opportunity to respond, the appropriate discipline outcome will be determined by a person with the appropriate delegation to consider termination of employment as an appropriate outcome.

Step 1: Inform the employee and seek their response.

Recommended timeframe for step completion: five business days for employee to respond.

The first step commences with the School advising the employee in writing. The written notice is to be provided to an employee as soon as practicable and should:

- Identify and describe the specific areas of unsatisfactory work performance;
- Invite the employee to a meeting for the purpose of them providing a response to the identified unsatisfactory work performance;
- Allow the employee the opportunity to provide details of any mitigating circumstances.
- Allow the employee to be accompanied by a nominee of his/her choice at all meetings scheduled to discuss the employee's performance.

The employee's response and the details of any mitigating circumstances are to be documented. If the employee does not provide a response, this is also to be documented.

Step 2: Consider the employee response (if any) and notify them of the outcome.

Recommended timeframe for step completion: five business days.

The employee's response (if one was provided), including any mitigating circumstances raised, are to be considered by the School.

If the employee identifies any factors negatively impacting on their work performance and the ability to meet the required standards and expectations of the role, then alternatives to formal management action are to be assessed and implemented.

If it is determined that the employee's response is sufficient (if one was provided) and/or otherwise that no further action is required, the employee is to be notified in writing.

If it is determined that the employee's response is not sufficient, then the employee is provided with a 'timeframe to improve'. This is to give the employee an opportunity to demonstrate that they can improve their work performance to a satisfactory level within a reasonable timeframe. The line manager determines the timeframe and it varies in duration depending on a role and its complexity, the areas of unsatisfactory work performance and the reasons for it. The duration may vary from two weeks to up to three months, and is to be set with the following in mind:

- The goals to be achieved;
- Reasonable time for support/development strategies to be implemented;
- Reasonable time for the employee to act on agreed outcomes and demonstrate sustained improved performance;
- The general expectation that performance will improve in a timely manner;
- Availability of the employee over the full period of the 'timeframe to improve'.

The line manager chooses the method to monitor the employee's performance during the timeframe and this may include regular meetings with the employee (weekly or fortnightly) with suitable documentation being kept. The outcomes of each meeting must include:

- Specification of the performance requirements that have not been met;
- The actions the employee is required to undertake to improve performance;
- Details on the development and support that is to be provided to the employee to help them achieve the required performance outcome;
- The timeframe for achievement, milestones to be met and the frequency of monitoring.

The following measures are usually used to manage the employee's unsatisfactory performance:

- Increased supervision
- Changes to the employee's performance plan
- Mentoring
- Training and professional development
- Increased feedback
- Coaching

At the conclusion of the 'timeframe to improve' the line manager and the employee should have a clear understanding of whether the employee has met the required level of work performance over the period.

Step 3: Conclude the 'timeframe to improve' and consider any next steps

Recommended timeframe for step completion: within five business days of the end of the period.

If the employee has met the required standard of work performance.

If it is determined that the employee has met the required standard of work performance, the employee is notified in writing of the outcome. A copy of the letter is placed on the employee's personnel file.

If the employee subsequently engages in continued or repeated unsatisfactory work at a later time, the line manager may resume the process at the appropriate stage and the employee will be notified about it.

If the employee has not met the required standard of work performance.

At the end of the 'timeframe to improve', the line manager may choose to extend the period for a further period. This would only occur if the employee has shown substantial improvement, but has not yet fully met or demonstrated a satisfactory level of work performance. It is not recommended to extend the period if the employee has not demonstrated significant improvement, nor if there is little prospect that the employee will meet the required level of work performance. It is recommended that line managers seek advice from the HR Officer, if they need assistance.

If it is determined that the employee has not met the required level of work performance, the process recommences at Step 1 and moves through to the next stage of the three stage process in sequence, unless the Third Stage – Final written warning has already been issued, in which case the following applies.

If the process has been followed and the employee's work performance has been unsatisfactory, the School will determine the unsatisfactory work performance outcome to apply from the following possible outcomes:

- Assignment of the employee to a role at a classification grade lower than the employee's current classification grade.
- Termination of employment.

6. Conduct Management Procedure

The School's general approach to managing conduct issues is outlined below.

Step 1: Make an initial assessment

Recommended timeframe for step completion: three business days.

The first step in the disciplinary process is to make an initial assessment that:

- Misconduct may have occurred;
- An investigation is required.

In making the initial assessment, it is important to consider the relevant documentation or information and how the matter has come to the attention. This can be from a variety of sources that may include:

- Receipt of a verbal or written complaint;
- Information provided by a line manager;
- Information provided by another employee or a member of the community.

The process of making the initial assessment should remain relatively simple.

Line managers may conduct some basic fact-finding, which may or may not involve speaking with relevant people, depending on the sensitivity of the potential allegations and checking that there is a reasonable basis on which to proceed.

While a full examination of the evidence is not required at this stage, the line manager should be satisfied that the information, which they have relied upon in making the initial assessment, is just and correct. In some instances, this may require further discussion or information from the source to clarify details, so that reasonable allegations and particulars can be drafted. After gathering and considering the relevant information, the relevant line manager needs to confirm:

If the matter does not warrant further action, the reasons for not progressing with the matter must be documented. If the employee is aware of the relevant information, it is appropriate to notify the employee that the matter does not warrant further action under this policy.

If it is assessed that the matter is one of alleged misconduct, progress to Step 2 and seek advice from the HR Officer for assistance managing the process under Steps 2 to 6.

Step 2: Notify the employee

Recommended timeframe for step completion: five business days for employee to respond.

If the matter is to be managed under this Part, the employee is notified in writing of the allegation(s) and particulars in support of each allegation.

The HR officer will generally be responsible for framing the allegation(s) and particulars and they may seek further clarification from the line manager and other persons, if required.

It is recommended that this written notice be provided to the employee as soon as practicable, and the written notice must include the following:

- The allegations and particulars of the misconduct by the employee;
- The time, date and place of the meeting to discuss the employee's conduct;
- A reasonable opportunity for the employee to seek advice from a representative of their choice;
- The opportunity for the employee to provide details of any mitigating circumstances (includes inviting the employee to a meeting for this purpose). The employee can provide their response and any mitigating circumstances in person at the meeting, or provide a response in writing prior to the meeting. If a response in writing is received, it is recommended that the meeting still proceed as scheduled.

If the employee attends the meeting their response needs to be documented. If the employee does not attend the meeting or otherwise provide a response within the timeframe, this is documented and the process continues.

Step 3: Consider the employee's response (if any) and notify them of next steps

Recommended timeframe for step completion: five business days.

All of the relevant information, the employee's response (if one was provided) including any mitigating circumstances raised, must be taken into account by the line manager and the HR Officer.

The process of considering the employee's response is simply a matter of determining whether the employee's response is sufficient to satisfy that misconduct has not occurred. Further enquiries may be required in certain circumstances. If it is determined that the employee's response is sufficient and that no further action is required under this Part, the employee is to be notified.

If it is determined that the employee's response is not sufficient (if one was provided) and/or otherwise that further action is required, then the matter will proceed to investigation.

Step 4: Investigation and findings

Recommended timeframe for step completion: 30 business days.

If it is determined that misconduct may have occurred, the School will appoint a person to conduct an investigation into the matter.

The HR Officer is to ensure that the employee is notified that an investigation will be conducted and confirm who has been appointed.

Witnesses who will be asked to participate in the investigation are to be notified by the HR Officer.

Where appropriate, the investigation can be conducted by the employee's immediate line manager, or by the HR Officer. The employee will be given an opportunity to speak to them if they wish to do so.

The investigation includes, but is not limited to, the following:

- Collecting any relevant materials;
- Speaking with the employee;
- Speaking with any other relevant parties;
- Presenting the employee with specific particulars to allow the employee to properly respond to the alleged conduct;
- Seeking an explanation from the employee;
- Investigating any explanation made by the employee for the purposes of verifying the explanations so far as possible.

Investigations should generally be completed within the recommended timeframe; however, matters that are particularly complex or voluminous may require a longer period of time to complete. Circumstances where witnesses or the employee have pre-approved leave from work or are taking leave which affects their capacity to participate in the investigation may also impact on investigation timeframes.

The findings of the investigation will be reported to the School by way of a written report. Any delays that affect the completion of the investigation in the recommended timeframe should be documented.

If the investigator finds that an allegation of misconduct against the employee is not substantiated then the matter will conclude in relation to any such allegation and the employee is notified in writing.

If the investigator finds that an allegation of misconduct against the employee is substantiated the process continues and the line manager proposes an outcome.

Step 5: Inform the employee of findings and propose a discipline outcome

Recommended timeframe for step completion: five business days.

As soon as reasonably practicable after the investigator has issued their report and made the findings that the allegation of misconduct against the employee is substantiated, the employee will be provided with the findings and a proposed discipline outcome.

In relation to referred unsatisfactory work performance, any matters that have arisen under Part 2 of these procedures may be used to determine the appropriate disciplinary outcome to propose under this Part.

The possible disciplinary outcomes that can be proposed are:

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- No action;
- Performance management;
- Assignment of the employee, with or without their agreement, to a role at a classification level or value range lower than their current classification level or value range;
- Termination of employment.

A copy of the investigation report and findings will usually be provided to the employee, but some sections or attachments to the report may be omitted or redacted so that appropriate privacy and confidentiality is maintained. Unless exceptional circumstances exist, the employee is required to provide their response to the findings and the proposed discipline outcome in writing. If no response is received, the process continues and the matter will be determined based on the available information.