



Department of
Education

Substandard Performance Procedures

Effective date: 15 March 2016

Version: 2.4

Accurate at the time of printing 29/07/2021.

These procedures must be read in conjunction with the Employee Performance Policy.

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These procedures must be read in conjunction with the Employee Performance Policy.

1. Policy supported

Employee Performance Policy

2. Scope

These procedures apply to all employees.

3. Procedures

3.1 Substandard performance

Superordinates and line managers will:

- base their opinion that an employee's performance is substandard on evidence and the reasonable expectations of the role; and
- not commence substandard performance management unless an employee has been:
 - previously formally advised what aspects of their performance are considered unsatisfactory;
 - formally advised of the possible consequences, which may include a range of sanctions, including termination of employment, should their performance be found to be substandard; and
 - given a reasonable opportunity and assistance to improve to a satisfactory standard.

In managing substandard performance, line managers will:

- employ and demonstrate a proper and fair process;
- communicate clearly and openly with the employee throughout the process; and
- treat employees with courtesy, sensitivity and consideration.

Guidance

For a flowchart, see Appendix A – Substandard Performance Process – Section 79.

Section 79 of the Public Sector Management Act 1994 provides:

“the performance of an employee is substandard if and only if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of those functions.”

Section 239 of the School Education Act 1999 imports section 79 of the Public Sector Management Act 1994 for members of the teaching staff and other officers.

Wages employees are subject to the common law. Principles of procedural fairness apply to any substandard performance management process.

An employee may be accompanied by a support person at any meeting regarding substandard performance.

The functions of principals and teachers are described in sections 63 and 64 of the School Education Act 1999 and further elaborated under the School Education Act Employees' (Teachers and Administrators) General Agreement 2014 and the Teachers (Public Sector Primary and Secondary Education) Award 1993.

Expectations for teachers at the Proficient level are described in the [Australian Professional Standards for Teachers](#).

3.2 Employees covered by section 79 of the Public Sector Management Act

3.2.1 Putting the allegation to the employee

Line managers will:

- comprehensively document and conduct substandard performance processes in accordance with section 79 of the Public Sector Management Act 1994 and the principles of procedural fairness; and
- formally brief their superordinate in writing when an employee's performance may be considered substandard during the performance management process and following provision of appropriate support.

If the superordinate considers that there is reasonable evidence that the employee's performance may be substandard, the superordinate will make a written recommendation to the Director General or delegate requesting that the allegation of substandard performance is put to the employee.

The Director General or delegate:

- provides the employee with written notification of the areas in which their performance is considered substandard;
- invites the employee to admit or deny the allegations in writing within ten (10) working days;

and

- informs the employee that a support person may be present as an observer at any meetings.

3.2.2 Receiving and considering the response

The Director General or delegate:

- considers the employee's response before taking further action;
- where the employee provides an adequate explanation, informs the employee that no further action will be taken; or
- where the employee does not provide an adequate explanation, informs the employee that the alleged substandard performance will be investigated.

Guidance

Where an allegation of substandard performance is proven, there are sanctions available to employers in accordance with section 79 (3) of the Public Sector Management Act 1994 or any applicable industrial instrument.

Where an employee agrees with the allegation that their performance is substandard, the employer may apply one of the following sanctions:

- withhold for a period as the employer thinks fit an increment of remuneration otherwise payable to the employee;
- reduce the level of classification of that employee; or
- terminate the employment in the public sector of that employee.

3.2.3 Investigation

The Director General or delegate authorises an investigation and provides the employee with an opportunity to attain and sustain performance at the satisfactory standard.

3.2.4 Putting the report to the employee and considering their response

The Director General or delegate provides the employee with:

- a copy of the report, the findings, and any proposed sanctions(s); and
- the opportunity to respond in writing within ten (10) working days.

3.2.5 Notification of decision

After considering the finding and the employee's response, the Director General or delegate

notifies the employee of the decision.

3.2.6 Appeal process

Line managers will inform the employee that they may appeal to the WA Industrial Relations Commission against:

- a finding that their performance is substandard; and /or
- any sanction that has been imposed, except where that sanction is to withhold a salary increment in accordance with section 78(1) (b) of the PSM Act.

3.3 Employees not covered by section 79 of the Public Sector Management Act 1994

Line managers will document and conduct substandard performance processes in accordance with relevant industrial instruments and the principles of procedural fairness. This requires that the allegation of sub-standard performance be put to the employee, they be given a right of response and an opportunity to address the matter.

Guidance

Advice should be sought from Labour Relations regarding the management of substandard performance for wages staff as some industrial instruments may impose certain requirements.

Affording the affected employee procedural fairness and a consideration of the prevailing circumstances is required. An investigation authorised by the Director General or delegate is not required for wages employees, as they are not covered by section 79 of the Public Sector Management Act 1994.

However, there is still a requirement to keep comprehensive documentation and records as an independent review of the process will be undertaken to assist the Director General or delegate to make a decision.

For non-section 79 employees, the only sanctions available for substandard performance are reprimand, or termination of employment. Only the Director General or delegate can apply a sanction.

If a non-section 79 employee is a union member, the union may take a dispute about the sanction to the WA Industrial Relations Commission. If the sanction is termination of employment, the employee may make an unfair dismissal application to the WA Industrial Relations Commission.

3.3.1 Allegation of substandard performance not upheld

Where an allegation of substandard performance is not upheld, but concerns regarding some aspects of the employee's performance remain, the line manager will consider and address any work-related issues within the context of performance management.

4. Definitions

Procedural fairness

A process that demonstrates procedural fairness is one in which:

- decision makers act fairly and provide reasons for decisions;
- the person affected is given a fair hearing;
- all parties to a matter have an opportunity to put their case where an adverse decision or finding is made; and
- all relevant arguments are considered and irrelevant arguments are excluded.

Substandard performance

The performance of an employee is substandard if and only if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may reasonably be expected to attain or sustain in the performance of those functions

Superordinate

The person to whom an individual's line manager reports or a more senior manager.

5. Related documents

Relevant legislation or authority

[Commissioner's Instruction: Code of Ethics](#)

[Commissioner's Instruction: Performance Management Standard](#)

[Equal Opportunity Act 1984](#)

[Freedom of Information Act 1992](#)

[Industrial Relations Act 1979](#)

[Public Sector Management Act 1994](#)

Related Department policies

[Records Management](#)

[Staff Conduct and Discipline](#)

Other documents

[Australian Professional Standards for Teachers](#)

[Australian Professional Standard for Principals](#)

[Grievance Framework](#)

[Industrial instruments applicable to Department of Education employees \(staff only\)](#)

[Performance Management Standard](#)

6. Contact information

Policy manager:

Director, Workforce Policy and Coordination

T: (08) 9264 4135

Policy contact officer:

Manager, Workforce Policy

T: (08) 9264 5040

Other:

Labour Relations

T: (08) 9264 4921

7. History of changes

Effective date	21 July 2010
Last update date	5 July 2012
Policy version no. Notes	Guidelines in section 4.2 amended to reflect changes to School Education Act Employees' (Teachers and Administrators) General Agreement as per D12/0372966, nomenclature throughout policy updated, definition of performance management updated.

Effective date	28 September 2012
Last update date Policy version no.	

Notes	Changes to reflect the National Professional Standards for Teachers. Changes endorsed by Corporate Executive at meeting 7 September 2012.
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Effective date	28 September 2012
Last update date	11 July 2013
Policy version no. Notes	Amendment of references to National Professional Standards for Teachers to Australian Professional Standards for Teachers. D13/0098087 Amendment to references to documents as per D13/0222254.

Effective date	28 September 2012
Last update date	23 August 2013
Policy version no. Notes	Updated link to Australian Professional Standard for Teachers in Appendix A. D13/0394461

Effective date	17 December 2013
Last update date Policy version no. Notes	Addition of procedure at section 4.2 and Appendix C. Changes endorsed by Corporate Executive 2 December 2013.

Effective date	17 December 2013
Last update date	19 December 2013
Policy version no. Notes	Addition of point about leave management to Appendix A, Section 3. D13/0666788

Effective date	17 December 2013
Last update date	27 February 2014
Policy version no. Notes	Minor change to formatting in Appendix C. D14/0061908

Effective date	28 July 2014
Last update date Policy version no. Notes	Numerous changes throughout policy D14/0259580, D14/0323911 and D14/0369019.

Effective date	28 July 2014
Last update date Policy version no. Notes	Appendix B updated to reflect v1.6 changes prior to policy taking effect.

Effective date	28 July 1914
Last update date	12 September 2014
Policy version no. Notes	Update to guidance re: professional development and career guidance in section 4.2. D14/0434228.

Effective date	28 July 2014
Last update date	1 December 2014
Policy version no. Notes	Minor changes to guidance and appendix C. D14/0527043.

Effective date	15 March 2016
Last update date Policy version no. Notes	Major review undertaken and policy reformatted into policy and procedures. Endorsed by the Director General at Corporate Executive on 12 February 2016.

Effective date	15 March 2016
Last update date	28 April 2016
Policy version no. Notes	Corrected link for Australian Professional Standards for Teachers. D16/0260595

Effective date	15 March 2016
Last update date	10 June 2016
Policy version no. Notes	Minor amendments in response to Corporate Executive decision on 12 February 2016. Endorsed by the Director General at Corporate Executive on 29 April 2016. Minor amendments to Appendix C, Employee Performance Procedures and Appendix A, Substandard Performance Procedures confirmed by Policy Subcommittee on 1 June 2016.

Effective date	15 March 2016
Last update date	21 June 2017
Policy version no. Notes	Minor typo change to guidance under section 3.3 D17/0263489

Effective date	15 March 2016
Last update date	25 May 2020
Policy version no. Notes	Minor changes to update broken links. D20/0260934

8. Appendices

Appendix A: [Substandard Performance Process Section 79](#) (PDF file - 53.8kB)

9. More information

Supporting content

Policy

[Employee Performance Policy](#)

Procedure

[Employee Performance Procedures](#)

Procedure review date

15 March 2019

Procedure last updated

25 May 2020
