GOVERNMENT OF
WESTERN AUSTRALIA

Department of
Education

Substandard Performance procedures

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These procedures must be read in conjunction with the Employee Performance and Development policy.

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These procedures must be read in conjunction with the Employee Performance and Development policy.

1. Policy supported

Employee Performance and Development 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 performance expectations of the role
- not request the commencement of a substandard performance investigation 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
  - given a reasonable opportunity and assistance to improve to a satisfactory standard.

In managing substandard performance processes, line managers and authorised performance managers will:

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

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- consider the health, safety and wellbeing of employees involved in the process
- manage the retention and disposal of substandard performance records, in accordance with the *State Records Act 2000* and the Department's Recordkeeping plan (staff only).

Guidance

The process related to Substandard Performance is detailed in Appendix A which summarises approval, management and accountability requirements.

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 for members of the teaching staff and other officers.

Employees not covered by section 79 of the Public Sector Management Act 1994 are subject to the common law. Principles of procedural fairness apply to any substandard performance process.

Where a substandard performance process is undertaken, all relevant documents, or copies of documents, should be provided to Employee Relations as a part of the process. Those documents will be retained by the Department in accordance with the requirements of the State Records Act and Department's Recordkeeping (staff only).

An employee may be accompanied by a support person at any meeting regarding potential substandard performance. Understand the role of a support person (staff only). Provisions relating to representation of employees in public service and ministerial officer positions can be found in the Public Sector CSA Agreement (staff only).

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 and the Teachers (Public Sector Primary and Secondary Education) Award .

Expectations for teacher performance are set out in the Australian Professional Standards for Teachers. Teachers in their first 2 years of teaching following graduation will generally be assessed at the graduate career level of the Standards. Thereafter all teachers are required to demonstrate performance at the proficient career level.

Refer to the relevant performance expectations for the role in the Employee Performance and Development procedures.

An employee who retires or resigns during a substandard performance process will have their employment record notated as unsuitable for future employment and, for applicable employees, notification must be made to the Teacher Registration Board of Western Australia. The employee will be advised of the process for having the notification on their employment record removed.

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

3.2.1 Putting the allegation to the employee

Line managers and authorised performance 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
- brief their superordinate when an employee's performance may be considered substandard.

If there is reasonable evidence that the employee's performance may be substandard, the line manager or authorised performance manager 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 will:

- provide the employee with written notification of the areas in which their performance is considered substandard
- invite the employee to admit or deny the allegations in writing within 10 business days
- inform the employee that a support person or union representative may be present at any meetings.

3.2.2 Receiving and considering the response

The Director General or delegate will:

- consider the employee's response before taking further action
- where the employee provides an adequate explanation, inform the employee that no further action will be taken
- where the employee does not provide an adequate explanation, inform the employee that the alleged substandard performance will be investigated
- where the employee admits their performance has been substandard, determine the penalty to be applied.

Guidance

All policy and procedural statements contained within this document are lawful orders for the purposes of section 80(a) of the Public Sector Management Act 1994 (WA) and are therefore to be observed by all Department of Education employees.

Where an allegation of substandard performance is proven, there are sanctions available to employers in accordance with section 79 (3) of the *P*ublic Sector Management Act 1994 or any applicable industrial instrument. 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
- terminate the employment in the public sector of that employee.

In accordance with Teacher Registration Act (2012) section 42, Employee Relations will give notice to the Teacher Registration Board when a teacher ceases teaching for substandard performance.

3.2.3 Investigation

The Director General or delegate will authorise an investigation.

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 or sanctions
- the opportunity to respond in writing within 10 working days.

3.2.5 Notification of decision

After considering the finding and the employee's response, the Director General or delegate will notify the employee of the decision, including any penalties that are to be applied.

3.2.6 Appeal process

The employee will be informed by the Director General or delegate that they may appeal to the WA Industrial Relations Commission against:

- a finding that their performance is substandard
- 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 Public Sector Management Act.

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

All policy and procedural statements contained within this document are lawful orders for the purposes of section 80(a) of the Public Sector Management Act 1994 (WA) and are therefore to be observed by all Department of Education employees.

Line managers will document and conduct substandard performance processes in accordance with relevant industrial instruments and the principles of procedural fairness, as follows:

- the employee has previously been advised of concerns about their performance and given reasonable opportunity to address these
- the allegation of substandard performance is put to the employee clearly and that they be given a right of response
- performance is assessed fairly and objectively
- comprehensive documentation and records of the process undertaken must be kept as an independent review of the process will be undertaken to inform the Director General or delegate's decision making.

Guidance

Advice is sought from Employee Relations regarding the management of substandard performance for staff not covered by section 79 of the Public Sector Management Act, as some industrial instruments may impose specific requirements. Only the Director General or their delegate have the authority to terminate the employment of employees not covered by section 79 of the Act for substandard performance. It is Employee Relations' role to advise the decision maker on the adequacy of the process undertaken at school level.

Affording the affected employee procedural fairness and a consideration of the prevailing circumstances is required. This will generally involve an investigation authorised by the Director General or delegate.

3.3.1 Allegation of substandard performance upheld

Where an employee's performance is found to be substandard and a decision is taken to terminate employment, the Director General or delegate will inform the employee that they may appeal that decision to the WA Industrial Relations Commission.

Guidance

For employees not covered by section 79 of the Public Sector Management Act, the only sanctions available for substandard performance are a reprimand or termination of employment. Only the Director General or delegate can apply a sanction.

3.3.2 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

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address any work-related issues within the context of the performance and development process.

4. Definitions

Authorised performance manager

A person who has been delegated responsibility for the performance management of a specific employee by that employee's line manager or by a superordinate.

Delegate

A delegate is the specified position within the Department with the authority under an Instrument of Delegation to exercise a function, power or duty assigned to the Minister or the Director General by the Public Sector Management Act 1994.

Line manager

The position to whom the employee reports.

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
- all relevant arguments are considered and irrelevant arguments are excluded.

Substandard performance

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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 40: Ethical Foundations

Equal Opportunity Act 1984

Freedom of Information Act 1992

Industrial Relations Act 1979

Performance Management Standard

Public Sector Management Act 1994

State Records Act 2000

Teacher Registration Act 2012

Work Health and Safety Act 2020 (WA)

Related Department policies

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Bullying in the Workplace policy

Complaints and Notifications policy

Managing a Breach of Public Sector Standard Claims

Records Management policy

Staff Conduct and Discipline policy

Work Health and Safety policy

Other documents

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Australian Professional Standard for Principals

Australian Professional Standards for Teachers

Australian Teacher Performance and Development Framework

Code of Conduct (staff only)

Complaints and notifications framework

Complaints and notifications categorisation schedule (staff only)

Competency framework for school psychologists (staff only)

Competency framework for education assistants special needs (interim)

Department of Education: Record keeping plan (staff only)

Finance capability framework for the WA public sector

Grievance Framework

Human resources capability framework for the WA public sector

Industrial instruments applicable to Department of Education employees (staff only)

Leadership Expectations

Building Leadership Impact

Public Sector Capability Profiles

School corporate services staff competency framework

School psychologist competency framework (staff only)

School Psychology Service's Professional Practice Guidelines (accessible by members of the School Psychology Service only).

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6. Contact information

Policy manager:

Director, Industrial and Employee Relations

Policy contact officer:

Manager, Employee Relations

Telephone: (08) 9264 4921 (option 2)

Other:

Employee assistance program

Manager assistance program

Telephone: 1300 307 912 (toll free)

7. History of changes

Effective date	21 July 2010
Last update date	5 July 2012
Procedure version no.	1.2
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 **Procedure version no.**	1.3

All policy and procedural statements contained within this document are lawful orders for the purposes of section 80(a) of the Public Sector Management Act 1994 (WA) and are therefore to be observed by all Department of Education employees.

Notes	Changes to reflect the National Professional Standards for Teachers. Changes endorsed by Corporate Executive at meeting 7 September 2012.
Effective date	28 September 2012
Last update date	11 July 2013
Procedure version no.	1.3
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
Procedure version no.	1.3
Notes	Updated link to Australian Professional Standard for Teachers in Appendix A. D13/0394461
Effective date	17 December 2013
Last update date **Procedure version no.**	1.4
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
Procedure version no.	1.4
Notes	Addition of point about leave management to Appendix A, Section 3. D13/0666788

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Effective date	17 December 2013
Last update date	27 February 2014
Procedure version no.	1.5
Notes	Minor change to formatting in Appendix C. D14/0061908

Effective date	28 July 2014
Last update date **Procedure version no.**	1.6
Notes	Numerous changes throughout policy D14/0259580, D14/0323911 and D14/0369019.

Effective date	28 July 2014
Last update date **Procedure version no.**	1.7
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
Procedure version no.	1.8
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
Procedure version no.	1.9
Notes	Minor changes to guidance and appendix C. D14/0527043.

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Effective date	15 March 2016
Last update date **Procedure version no.**	2.0
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
Procedure version no.	2.1
Notes	Corrected link for Australian Professional Standards for Teachers. D16/0260595

Effective date	15 March 2016
Last update date	10 June 2016
Procedure version no.	2.2
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
Procedure version no.	2.3
Notes	Minor typo change to guidance under section 3.3 D17/0263489

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Effective date	15 March 2016
Last update date	25 May 2020
Procedure version no.	2.4
Notes	Minor changes to update broken links. D20/0260934

Effective date	17 February 2026
Last update date **Procedure version no.**	3.0
Notes	Major review to comply with the Department Code of Conduct and the Work Health Safety policy. Clarification of annual performance & development cycle. Performance expectation for all employee groups. Consistent formatting of procedures for each employee group. Approval (1) D25/0574867 Approval (2) new changes D26/0111791

Effective date	17 February 2026
Last update date	27 August 2026
Procedure version no.	3.1
Notes	Minor change to the instances of "three years" to "two years" in reference to graduate teachers in guidance. (Approval D26/0680115)

8. Appendices

Appendix A: Substandard Performance Process Section 79 (PDF file - 203.5kB)

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9. More information

Supporting content

Policy

Employee Performance and Development policy

Procedure

Employee Performance and Development procedures

Procedure review date

17 February 2029

Procedure last updated

27 August 2026

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