

Performance management and discipline policy

HDKA promotes a commitment to child safety, wellbeing, participation, empowerment, cultural safety and awareness including children with a disability, Aboriginal and Torres Strait Islander children and/or communities and children from cultural and/or linguistically diverse backgrounds.

HDKA has a zero tolerance of child abuse and a duty of care to prevent and manage child abuse risks including physical and online environments.

Purpose

This policy will provide guidelines to:

- The policy and process for dealing with unsatisfactory performance of staff within HDKA.

Values

HDKA is committed to:

- Take action to addressing performance issues where unsatisfactory performance has been identified.
- That action taken to address unsatisfactory work performance will be consistent with the principles of procedural fairness.
- Ensuring that disciplinary procedures are consistent, fair equitable and that the principles of natural justice are observed.

Scope

This policy applies to all staff of HDKA.

Background

HDKA is committed to providing a safe, positive and supportive work environment for all staff. Where organisational policies and procedures are not followed and when all other efforts to encourage improvement in work performance or conduct have failed to effect change, HDKA recognises that disciplinary action may be required.

Legislation

- *Equal Opportunity Act 2010 (Vic)*
- *Occupational Health and Safety Act 2004 (Vic)*

Definitions

Principles of natural justice and procedural fairness – staff who are subjected to performance management or disciplinary procedures at HDKA will be treated at all times in accordance with the principles of natural justice. These principles include:

- The right to adequate notice and full information about the work performance or conduct issue to be addressed.
- Provision of a reasonable opportunity to respond to the stated concerns and to have the response genuinely considered.
- The right to an unbiased, independent disciplinary process including being clearly informed of potential consequences during each step of the process.
- The right to have disciplinary procedures conducted and concluded within reasonable timeframes and with clear outcomes.

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Support person – a person selected and invited by the staff member to attend a disciplinary meeting whose role is as a support only. A support person may be a trusted colleague from the workplace, an independent professional friend, a family member or a union representative.

Performance issues – failure to perform the duties of the position or to perform them to the standard required.

Misconduct – non-compliance with workplace policies, rules or procedures; unacceptable behaviour in the workplace; disruptive or negative behaviour that impacts on co-workers.

Where performance issues or misconduct appear to be continuous or unresolved after performance management then the issues may be dealt with in one process not necessarily as separate incidences.

Procedure

Key principles

- The principle objective of performance management and disciplinary procedures is to encourage improvement in the work performance and conduct of staff.
- Disciplinary procedures will only be considered when other methods of encouraging and supporting appropriate work performance and conduct are failing to effect change. These methods may include regular one-to-one supervision, training, peer support, coaching, performance appraisals, performance improvement plans, systematic work plans, mentoring and co-working arrangements as appropriate to the circumstances and issues involved.
- All staff and employer rights will be maintained at all times during the implementation of any performance management or disciplinary procedures and all award or employment processes.
- When it is necessary to commence formal disciplinary procedures the immediate objective is to resolve problems while maintaining mutual respect. Although the sanction of terminating employment may be an eventual outcome if satisfactory resolution cannot be achieved it is a last resort not an initial objective.
- All disciplinary actions are to be relevant and proportionate to the issue or issues and will be rationally linked to factors such as the seriousness of the breach, whether intentional or malicious, whether prior warnings have been given and whether there are mitigating circumstances.

Principles of natural justice and procedural fairness

- Staff will be given opportunities to improve work performance or conduct before formal disciplinary processes are implemented except in circumstances of serious or wilful misconduct.
- Any concerns or allegations about a staff member's work performance or conduct will be reported openly and respectfully to the staff member at the earliest point possible. The staff member will be advised of the potential consequences of any disciplinary procedures that could subsequently be implemented.
- The staff member must be given adequate opportunity to respond to the allegations and have their responses considered.
- The staff member must have the opportunity to be supported at all disciplinary meetings.
- All investigations and decisions must be made by persons with the appropriate authority.
- Confidentiality will be maintained at all times.

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Roles and responsibilities

The Executive Officer is responsible for the accurate implementation of this procedure and is the only person authorised to terminate employment due to serious or wilful misconduct or as the final result of a full disciplinary process.

The Pedagogical Leader and kindergarten teachers are responsible for day to day management of disciplinary procedures and for monitoring, recording and reporting on progress in relation to disciplinary actions.

The Pedagogical Leader and kindergarten teachers must advise the Executive Officer prior to the commencement of any formal disciplinary procedures and will keep records of attempts to resolve disciplinary issues.

When considering commencing disciplinary procedures the Executive Officer should seek appropriate advice from relevant external sources.

When performance or conduct has not improved or is of a serious nature then the Pedagogical Leader or kindergarten teacher will hand the process to the Executive Officer to implement the formal discipline process. Notes relating to any performance management or conduct will be placed in personnel files.

The Executive Officer, Pedagogical Leader or kindergarten teachers will ensure that the staff member is informed of all disciplinary procedures being considered in relation to their work performance or conduct. They will advise and support staff members during any disciplinary procedures and keep records of all attempts made to resolve disciplinary issues.

The support person is to provide a supportive presence to the staff member and act as a witness to the process. It is not the role of the support person to formally represent or advocate for the staff member. There may be circumstances where a union representative may attend or even a lawyer but the employer has the right to ensure that the person is there in a support capacity only. The support person and the staff member may request a break in the proceedings to discuss the staff member's responses.

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Within the scope, principles, roles and responsibilities outlined HDKA will use the following steps when warranted to address the identified work performance or conduct issues of staff.

HDKA retains the discretion to act as deemed appropriate in any particular disciplinary or performance issues which may warrant deviation from the steps described below.

Fair Work guidelines of best practice for managing underperformance should be followed in conjunction with this procedure. See Fair Work [best practice guide to managing underperformance](#).

General performance issues or misconduct

Step 1 – verbal warning

A written record of the verbal warning will be placed on the staff member's personnel file detailing what the warning was for including the time and place delivered and who was present.

Step 2 – first written warning – improved performance required or proven misconduct

The staff member will be given the opportunity to respond to allegations as described below. A letter requesting attendance to a meeting with the Executive Officer will be provided detailing the alleged performance issues or misconduct. The staff member should be made aware of the alleged performance issues or misconduct prior to receiving the attendance request.

Performance issues - if the staff member fails to meet the standards of improvement in performance in accordance with Step 1 the Executive Officer will within a reasonable period of time – five working days or an agreed period – conduct further discussion with the staff member at which time the staff

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member will be advised of the problems that are believed to continue to be exhibited in relation to the staff member's performance.

Proven misconduct – if it is proven that the staff member has breached the code of conduct or other HDKA policies and procedures and the breach is deemed to warrant a first written warning, then it is not necessary that a verbal warning be given first.

If warranted the Executive Officer will issue a written warning detailing any outcomes from the meeting including any directives given or standards of improvement required.

The team member will be provided with the warning in writing signed by the Executive Officer. A copy of the warning will be placed in the staff member's file.

Step 3 – final written warning – improved performance or serious misconduct

The staff member will be given the opportunity to respond to allegations as described below.

Performance issues - if the staff member fails to meet the standards of improvement in accordance with Step 2 within the dictated period of time, a further formal discussion with the staff member will occur where the staff member will be advised of the continued problems that are believed to exist in relation to the staff member's performance.

Serious misconduct – where proven that the staff member has breached the code of conduct or HDKA policies and procedures after receiving a first written warning, or the breach is deemed serious enough to warrant a final written warning but not serious enough to warrant summary dismissal, then a final written warning may be issued.

If warranted the Executive Officer will issue a final written warning detailing:

- The issues of concern.
- The standards of improvement that may be required.
- That it is a final written warning and failure to meet the standards of improvement or obligations under HDKA policies and procedures may result in termination of employment.

Step 4 – dismissal

If after receiving a final warning the staff member is further proven to have breached the expected level of performance or conduct within twelve months the staff member may be dismissed with or without notice or payment in lieu at the discretion of the Executive Officer. The notice of dismissal will outline the reasons for the dismissal.

Serious and wilful misconduct

HDKA reserves the right to summarily dismiss a staff member in circumstances that warrant summary dismissal such as serious and wilful misconduct.

This includes but is not limited to:

- Wilful or deliberate behaviour by a staff member that is inconsistent with the continuation of the contract of employment including a breach of the confidentiality procedure.
- Serious breaches of the HDKA code of conduct and social media policy.
- Conduct that causes imminent and serious risk to the health or safety of a person or the reputation or viability of HDKA's operations.
- Theft, fraud, assault, unseemly or offensive behaviour.
- The staff member possessing, consuming or being under the influence of alcohol or other impairing substances whether legal or illegal that may place children or parents, the community and co-workers at risk due to substance abuse.
- The staff member refusing to carry out a lawful and reasonable instruction
- A breach of HDKA policies on data management and control (confidentiality); the HDKA Acceptable Use IT policy (especially the unlawful or improper accessing or use of pornographic or other offensive materials.).

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Summary dismissal

The principles of natural justice require that before summary dismissal occurs adequate investigation and collation of evidence is seen to have occurred, and that the staff member is then provided with a final opportunity to meet with an Executive Officer to explain their situation. This should occur as quickly as is practicable.

Where the Pedagogical Leader or kindergarten teacher believes a staff member's conduct warrants summary dismissal they must refer the matter to the Executive Officer as soon as practicable. Only the Executive Officer can implement summary dismissal. If the Executive Officer is not available the staff member will be sent home on paid leave until the Executive Officer can be contacted.

Recording in personnel records

After a period of twelve months has elapsed without any further warning or disciplinary action being required a staff member may request that a note be placed on their personnel record alongside the original record of warning, drawing attention to this clear period of service.

Service policies

- *Code of conduct*
- *Social media*
- *Supervision of children*
- *Privacy and confidentiality*
- *Child safe environment*
- *Information and communication technology*