

*Educational excellence and Catholic Values*

# Policy Statement

## Discipline Procedures for Employees

Section 1: Unsatisfactory performance

Section 2: Serious misconduct

**February 2008**

**Issued by: Employment Relations**

**Evaluation Date: 2011**



**Catholic Education**  
**Diocese of Parramatta**

# Discipline Procedures for Employees

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## Related Documents

- The awards pertinent to employees in the Parramatta Catholic education system contain clauses
- addressing dispute procedures, suspension and termination
- *Addressing Unsatisfactory Performance Policy and Procedures* (2008)
- *Maintaining Right Relations* (2008)
- *Child Protection Kit* (CEO Parramatta)

Issued on behalf of the Parramatta Catholic education system and the Independent Education Union.

Signed: \_\_\_\_\_



**Gregory B Whitby**  
Executive Director of Schools  
Diocese of Parramatta

Signed: \_\_\_\_\_



**Dick Shearman**  
General Secretary  
NSW/ACT Independent Education Union

# Discipline Procedures for Employees

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## SECTION 1: EMPLOYEE DISCIPLINE PROCEDURE FOR UNSATISFACTORY PERFORMANCE

### 1.0 Introduction

In general, performance issues are addressed through usual supervisory processes and through professional development. If performance does not improve, the development process contained in the *Addressing Unsatisfactory Performance Policy and Procedures* document is undertaken. If, after this development process, performance does not improve, a disciplinary process will commence in accordance with the principles of the *Discipline Policy* for employees of the Parramatta Catholic education system. This procedure outlines the steps to be followed in the disciplinary process, a summary [flow-chart](#) is provided on page 9. The proposed time frame for the process may be varied to meet individual circumstances.

In the procedure, the 'supervisor' refers to the employer representative to whom a person reports. In schools this would usually be the principal and in the Catholic Education Office it would usually be the team leader.

The 'employer delegate' refers to the delegate of the executive director of schools. In schools the 'employer delegate' is usually the head of school service. For Catholic Education Office employees the 'employer delegate' will usually be represented by the head of service.

### 2.0 Little /no improvement following development process

In the event that there is little or no improvement in performance through the *Addressing Unsatisfactory Performance Policy and Procedures*, the employer delegate writes to the head of staff services outlining the nature of the unsatisfactory performance, describing the development process that has been followed and recommending that a disciplinary process commence. The employee receives a copy of this letter and any associated documentation.

Prior to making a decision to proceed to a disciplinary process, the head of staff services must satisfy him or herself that:

- the development process *Addressing Unsatisfactory Performance Policy and Procedures* has been followed appropriately
- the nature of the unsatisfactory performance is sufficiently serious to warrant the discipline process

### 3.0 Employee is advised

The head of staff services advises the employee and employer delegate of his or her decision in writing.

If the head of staff services determines that the discipline process will proceed, the employee receives written advice concerning:

- the nature of the unsatisfactory performance
- the seriousness of the matter
- a copy of the discipline procedure to be followed
- arrangements for an initial meeting to provide the employee with an opportunity to respond

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- matters to be discussed at the meeting
- the employee's right to have a support person present who may be a union representative
- the person who will be managing the process
- an offer of counselling through the employee assistance program

In arranging the interview, the employer delegate will cater for any particular circumstances including the need for an interpreter if required.

## 4.0 Process is planned

The employer delegate plans the discipline process in accordance with the steps outlined in this document and the principles in the *Discipline Policy* for employees to ensure:

- the process is managed confidentially, respectful of the persons involved
- a time frame is established to ensure the matter is addressed in a timely and effective manner
- the disciplinary process is fair (procedural fairness) and the final decision on action to be taken is fair (substantive fairness)
- a person facing a disciplinary process is provided with detailed information about unsatisfactory performance and has the opportunity to respond (natural justice)

Throughout the process advice is sought from employment relations and the Catholic Commission for Employment Relations as required.

## 5.0 Employee is interviewed

The employer delegate meets with the employee to advise of the nature of the unsatisfactory performance and to provide an opportunity for the person to respond. The employee is invited to have a support person present, who may be a legal or industrial representative. The employer delegate will have a support person to take notes of the meeting. The following protocol will be observed:

- discussion is between employer delegate and employee with support person/s present to record notes of the meeting
- details of the unsatisfactory performance are provided to the employee in writing with sufficient information to enable the employee to respond (in effect, the employee will have received this information as part of the *Addressing Unsatisfactory Performance Policy and Procedures* process)
- details of the required standards are provided
- the employer delegate checks whether the employee wants time to consider the matter with their support person. This may result in a break in the meeting or the employee providing a written response after the meeting, generally within one week
- the employee is invited to respond to the issues and to raise any other matters which the employee considers to be relevant

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## 6.0 Employee responds

If there is agreement about the nature of the unsatisfactory performance and the appropriateness of professional support and development that has been provided, the employer delegate proceeds to the preliminary finding (step 8).

If the employee disputes the nature of the unsatisfactory performance or disputes the appropriateness of the professional support and development that has already been provided, the employee provides evidence to support this claim.

## 7.0 Investigation

The employer delegate considers the evidence provided by the employee and investigates any issues raised.

## 8.0 Preliminary finding

The employer delegate provides a briefing to the head of staff services who considers all matters raised at the interview, the employee's response and other information that has been gathered.

The head of staff services determines the preliminary finding including any proposed disciplinary action to be taken. The finding may be that:

- performance is satisfactory and no further action is required
- process has not been followed appropriately and an extended development process is required
- performance is unsatisfactory and disciplinary action is proposed
- performance is unsatisfactory and termination of employment may result

The employer delegate arranges to meet with the employee to advise them of the preliminary finding (the employee may elect not to meet and to receive the preliminary finding only in writing).

The employee is invited to have a support person. Advice about the time, place and participants of the meeting is provided in writing. Adequate notice of meeting is given and any particular needs the employee identifies are addressed (e.g. presence of a translator).

The issues addressed at the meeting are as follows:

- the employer delegate's response to issues raised by the employee
- the preliminary finding and supporting evidence
- if performance is found to be unsatisfactory, disciplinary action and/or support initiatives proposed which may include a formal written warning, transfer to another school, professional counselling/ assessment or termination of employment
- an invitation to the employee to raise any issues which they believe need to be considered prior to the finding being finalised and a date by which additional information needs to be provided (generally one week)
- the name of a nominated person with whom the employee can raise concerns or discuss matters which are unclear

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- the offer of ongoing assistance through the employee assistance program Ph:1800 818 728

A record of the meeting is provided to the employee in writing.

## 9.0 Finding is determined

Having considered any further response from the employee, the head of staff services determines the finding.

### 9.1 Performance is satisfactory

If it is established that performance is satisfactory, no further action will proceed. If the employee has been subjected to unfair treatment, the employer delegate works with the employee to mediate an appropriate resolution.

### 9.2 Development process has not been followed appropriately

If it is established that there have been flaws in the process, or that more time is necessary to ensure fairness, an extended development process may be negotiated.

### 9.3 Performance is unsatisfactory and disciplinary action is taken

If, having considered all matters, the head of staff services determines that performance is unsatisfactory and disciplinary action is required, the employee will be advised in writing:

- the employer considers the employee's performance to be unsatisfactory
- the disciplinary action and/or support initiatives that apply
- the name of a nominated contact with whom the employee can discuss any matters that are not clear or from whom any assistance may be obtained
- monitoring and review will be undertaken

### 9.4 Performance is unsatisfactory and notification of intention to terminate is given

If, having regard to all matters it is determined that termination of employment is being considered, the following procedures and standards of fairness apply.

- The decision to terminate employment rests with the executive director of schools. The employer delegate meets with the head of staff services and the executive director of schools to provide a full briefing on the discipline process that has been followed.
- In providing the preliminary finding (step 8), the employer delegate advises that the executive director of schools is considering termination of employment and encourages the employee to seriously consider seeking industrial representation, if this has not already occurred.
- In providing the preliminary finding (step 8), the employer delegate invites the employee to identify any mitigating circumstances which the employee wishes the employer to take into account in reaching a decision.

## Discipline Procedures for Employees

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- In reaching a decision, the executive director of schools will have regard to all information available and will ensure that any decision to terminate employment is not harsh, unjust or unreasonable and is in compliance with the requirements of industrial legislation.

If the executive director of schools decides to terminate employment, the employee will be advised as soon as practicable at a meeting with the employer delegate. As this is a serious matter, the employee is encouraged to have a support person present who may be an industrial representative. At this meeting the employer delegate will:

- confirm the employee had the opportunity to be represented
- confirm that the employee had the opportunity to respond to the allegations
- confirm that the executive director of schools has considered all material, including the employee's response
- advise that the employee's employment has been terminated and the reasons for the termination
- advise of the date of termination having regard to minimum notice provisions
- negotiate any termination arrangements if appropriate (e.g. counselling or outplacement)
- arrange for the finalisation of any legal or industrial requirements and the payment of termination pay

The advice is confirmed in writing.

### 10.0 Appeals process

An employee may choose to appeal a disciplinary decision on a number of grounds which would include the perceived unfairness of judgment, the severity of the discipline action taken, new evidence coming to light or procedural irregularities.

An employee needs to advise they are appealing the outcome within five (5) working day of the employee receiving the disciplinary decision.

The appeal will be conducted by an independent person who has not been involved in the disciplinary process and will involve a review of the documentation.

The employee lodging the appeal will be informed in writing of the arrangements for the appeal process and the timeframe.

The employee will be informed in writing of the results of the appeal and the reasons for the decision. The employee will be advised if the decision constitutes the final stage of the appeals process.

If at the end of the process the employee is not satisfied with the outcome, they are advised that they may take the matter further. The Parramatta CEO acknowledges and respects that staff have legal entitlements under the relevant award and enterprise agreement, as well the *Industrial Relations Act* which may impact on the implementation of this policy.

# Discipline Procedures for Employees

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## 11.0 Record keeping

Copies of meeting records and any evidence collected related to a discipline process will be provided to the employee concerned, unless disclosure of such information infringes the privacy rights of another party. An employee may apply to view their file.

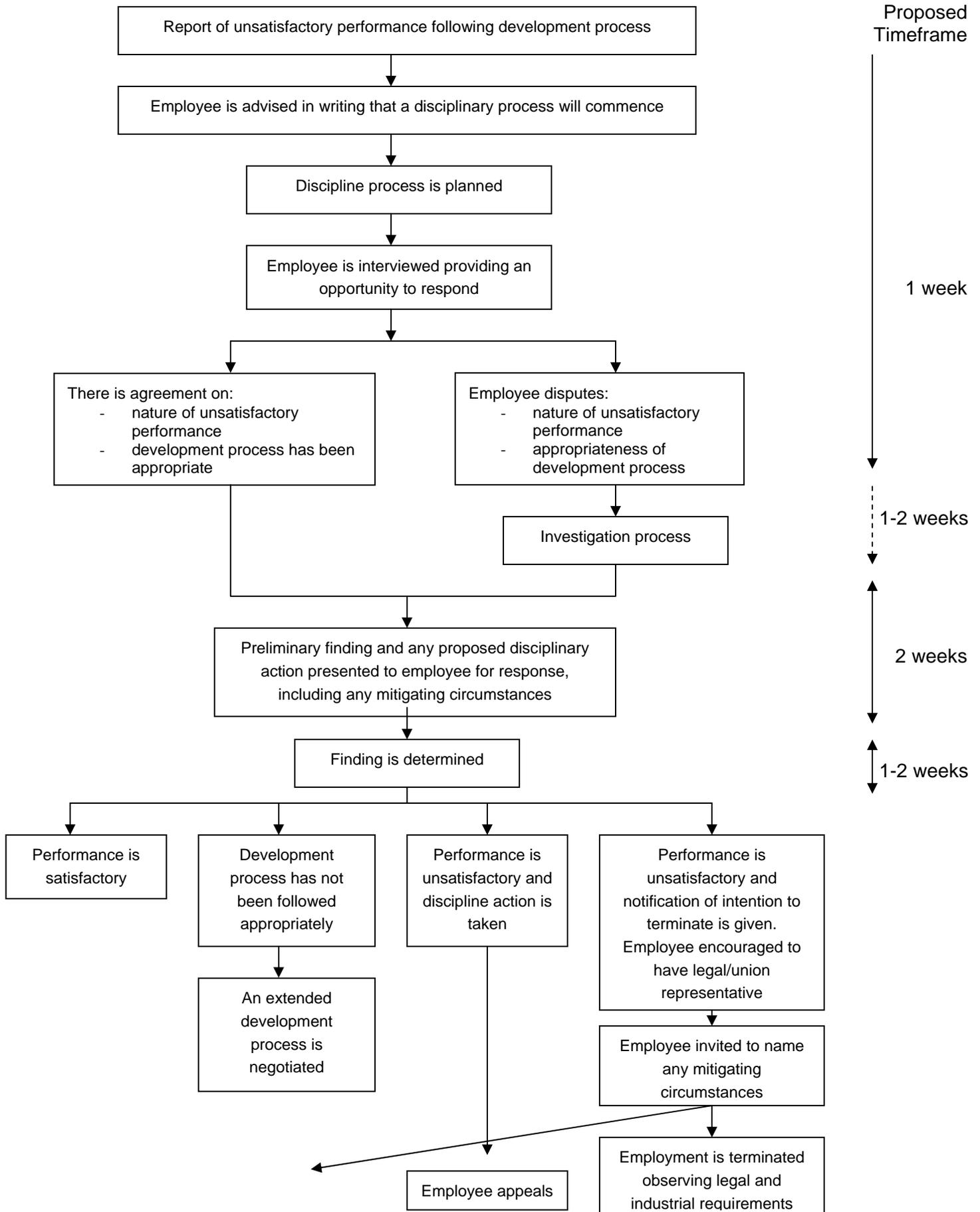
All documentation relating to a discipline process is kept in a confidential file in staff services. The file may only be accessed with the authority of the head of staff services.

For school employees, a copy of the final letter advising the employee of the outcome of the process is placed in the employees confidential personnel file at the school. For CEO employees, a copy of the final letter is placed in the employee's HR file at the CEO.

All records are administered in accordance with the requirements of the *Privacy Act 1988*.

# Discipline Procedures for Employees

## Discipline Procedure for Unsatisfactory Performance



# Discipline Procedures for Employees

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## SECTION 2: EMPLOYEE DISCIPLINE PROCEDURE FOR SERIOUS MISCONDUCT

### 1.0 Introduction

If there are serious concerns about an employee's conduct, which may include misrepresentation, serious breaches of system policy, neglect of duty or other misconduct, this procedure will be followed in accordance with the requirements of industrial legislation, the provisions of the relevant award and the principles outlined in the *Discipline Policy* for employees of the Parramatta Catholic education system. This procedure outlines the steps to be followed in the disciplinary process, a summary [flow-chart](#) is provided on page 16. The proposed time frame for the process may be varied to meet individual circumstances.

In the procedure, the 'supervisor' refers to the employer representative to whom a person reports. In schools this would usually be the principal and in the Catholic Education Office it would usually be senior Catholic Education Office personnel.

The 'employer delegate' refers to the delegate of the executive director of schools. In schools the 'employer delegate' is usually the head of school. For Catholic Education Office employees the 'employer delegate' will usually be represented by the head of service.

However, as advised under award provisions, this procedure does not affect the right of the employer to dismiss summarily an employee for incompetence, misrepresentation, neglect of duty and other misconduct.

### 2.0 Report of alleged misconduct

On receipt of a report of serious misconduct, the supervisor advises the employer delegate of the report. The employer delegate considers the alleged misconduct and the information that is available to demonstrate the need for a disciplinary process to be followed. This initial assessment of the misconduct is conducted promptly and may include:

- assessing relevant documentation
- interviewing person/s who may have knowledge of the employee's alleged misconduct

If the employer delegate determines that there may be substance to the alleged misconduct, the employer delegate recommends to the head of staff services the need for the discipline process to proceed.

### 3.0 Employee is advised

The head of staff services determines whether to proceed to a discipline process. If the discipline process proceeds, the employee receives written advice concerning:

- the alleged misconduct
- the seriousness of the matter
- a copy of the discipline process to be followed
- arrangements for an initial meeting to provide the employee with an opportunity to respond
- matters to be discussed at the meeting

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- the employee's right to have a support person present who may be a union representative
- the person who will be managing the process
- an offer of counselling through the employee assistance program

In arranging the interview, the employer delegate will cater for any particular circumstances including the need for an interpreter if required.

In cases of serious misconduct where relationships have broken down, or where there are responsibilities to other parties to consider, or where there is a concern about risks to persons or property, consideration will be given to a period of paid leave while an unhindered investigation is conducted. It would be made clear to the employee that the leave period is not considered as disciplinary action.

In cases where the employee remains on the work site during the discipline process, consideration will be given to how the employee may best be assisted to continue at work through the process.

## 4.0 Process is planned

The employer delegate plans the discipline process in accordance with the steps outlined in this document and the principles in the *Discipline Policy* for employees to ensure:

- the process is managed confidentially, respectful of the persons involved
- a time frame is established to ensure the matter is addressed in a timely and effective manner
- the disciplinary process is fair (procedural fairness) and the final decision on action to be taken is fair (substantive fairness)
- a person facing a disciplinary process is provided with detailed information about the alleged misconduct and has the opportunity to respond (natural justice)

Throughout the process, advice is sought from employment relations and the Catholic Commission for Employment Relations as required.

## 5.0 Employee is interviewed

The employer delegate meets with the employee to advise of the alleged misconduct and to provide an opportunity for the person to respond. The employee is invited to have a support person present who may be a legal or industrial representative. The employer delegate will have a support person to take notes of the meeting. The following protocol will be observed:

- discussion is between employer delegate and employee with support person/s present to record notes of the meeting
- details of the alleged misconduct are provided to the employee in writing with sufficient information to enable the employee to respond
- details of the required standards are provided e.g. relevant policy
- the employer delegate checks if the employee wants time to consider the matter with their support person. This may result in a break in the meeting or the employee providing a written response after the meeting, generally within one week.

# Discipline Procedures for Employees

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- the employee is invited to respond to the issues and to raise any other matters which the employee considers to be relevant

## 6.0 Employee responds

If the employee acknowledges that the alleged misconduct occurred, the employer delegate proceeds to the preliminary finding (step 8).

If the employee denies that the alleged misconduct occurred, the employee provides evidence to support this claim.

## 7.0 Investigation

The employer delegate proceeds to gather relevant information, for example written statements, interviews, documents and records.

## 8.0 Preliminary finding

The employer delegate provides a briefing to the head of staff services who considers all matters raised at the interview, the employee's response and other information that has been gathered.

The head of staff services determines whether or not the alleged misconduct is found to have occurred. The employer delegate arranges to meet with the employee to advise them of the preliminary finding.

The employee is invited to have: a support person; advice about the time; place and participants of the meeting provided in writing; adequate notice of meeting given; and any particular needs the employee identifies addressed (e.g. presence of a translator).

The issues addressed at the meeting are as follows:

- the employer delegate's response to issues raised by the employee
- the preliminary finding and supporting evidence
- if the matter is sustained a clear explanation of the unacceptable conduct giving reasons
- if the matter is sustained, disciplinary action and/or support initiatives that are proposed, which may include a formal written warning, transfer to another school, professional counselling / assessment or termination of employment
- an invitation to the employee to raise any issues which they believe need to be considered prior to the finding being finalised and a date by which additional information needs to be provided (generally one week)
- the name of a nominated person with whom the employee can raise concerns or discuss matters which are unclear
- the offer of ongoing assistance through the employee assistance program, ph:1800 818 728

A record of the meeting is provided to the employee in writing.

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## 9.0 Finding is determined

Having considered any further response from the employee, the head of staff services determines if the allegation of misconduct is sustained. In determining the finding the standard of proof required is 'on the balance of probabilities', that is, it is more probable than not that the alleged breach of conduct occurred.

## 9.1 Allegation is false

If it is established that the allegation is false, mischievous or vexatious the employer delegate works with the employee who has been accused to mediate an appropriate resolution.

An employee or student who makes a false, mischievous or vexatious complaint may be subject to disciplinary action.

## 9.2 Allegation is not sustained and no further action is required

If the allegation of misconduct is not sustained, no further action is taken. The employer delegate and supervisor discuss with the employee how resolution of the matter may be achieved.

## 9.3 Allegation is sustained and disciplinary action is taken

If, having considered all matters, the head of staff services determines that the allegation is sustained and disciplinary action is required, the employee will be advised in writing that:

- the employer considers the conduct to be unacceptable
- the potential consequences of further incidents of misconduct including (if applicable) termination of employment
- the disciplinary action and/or support initiatives that apply
- the name of a nominated contact with whom the employee can discuss any matters that are not clear or from whom any assistance may be obtained
- monitoring and review will be undertaken

## 9.4 Allegation is sustained and notification of intention to terminate is given

If, having regard to all matters, it is determined that termination of employment is being considered, the following procedures and standards of fairness apply:

- The decision to terminate employment rests with the executive director of schools. The employer delegate meets with the head of staff services and the executive director of schools to provide a full briefing on the discipline process that has been followed.
- In providing the preliminary finding, the employer delegate advises that the executive director of schools is considering termination of employment and encourages the employee to seriously consider seeking industrial representation if this has not already occurred.
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## Discipline Procedures for Employees

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- confirm the employee had the opportunity to be represented
- confirm that the employee had the opportunity to respond to the allegations
- confirm that the executive director of schools has considered all material, including the employee's response
- advise that the employee's employment has been terminated and the reasons for the termination
- advise of the date of termination having regard to minimum notice provisions
- negotiate any termination arrangements if appropriate (e.g. counselling or outplacement)
- arrange for the finalisation of any legal or industrial requirements and the payment of termination pay

The advice is confirmed in writing.

### 10.0 Appeals process

An employee may choose to appeal a disciplinary decision on a number of grounds which would include the perceived unfairness of judgment, the severity of the discipline action taken, new evidence coming to light or procedural irregularities.

An employee needs to advise they are appealing the outcome within five working day of the employee receiving the disciplinary decision.

The appeal will be contacted by an independent person who has not been involved in the disciplinary process and will involve a review of the documentation.

The employee lodging the appeal will be informed in writing of the arrangements for the appeal hearing and the timeframe for the appeal.

The employee will be informed in writing of the results of the appeal and the reasons for the decision. The employee will be advised if the decision constitutes the final stage of the appeals process.

If at the end of the process the employee is not satisfied with the outcome, they are advised that they may take the matter further. The Parramatta CEO acknowledges and respects that staff have legal entitlements under the relevant award and enterprise agreement, as well the *Industrial Relations Act* which may impact on the implementation of this policy.

# Discipline Procedures for Employees

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## 11.0 Record keeping

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For school employees, a copy of the final letter advising the employee of the outcome of the process is placed in the employees confidential personnel file at the school. For CEO employees a copy of the final letter is placed in the employee's HR file at the CEO.

All records are administered in accordance with the requirements of the *Privacy Act 1988*.

# Discipline Procedures for Employees

## Disciplinary Procedure for Serious Misconduct

