



## Catholic Schools Office Diocese of Lismore

# ADDRESSING EMPLOYEE PERFORMANCE AND DISCIPLINARY MATTERS

## STANDARD OPERATING PROCEDURE

**Status:** Current

**Date Issued:** 2018

**Evaluation and Review:** December 2018

# **SOP FOR ADDRESSING EMPLOYEE PERFORMANCE AND DISCIPLINARY MATTERS**

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## **1. PURPOSE**

The Diocesan Schools System of the Diocese of Lismore is committed to the development of our schools as workplaces fostering the dignity and development of each person. Quality education and service to schools are most likely to be provided where there is recognition, encouragement and support for the professional attitudes, development of employees and the industrial rights of all parties.

When a disciplinary matter (including issues of non-performance; staff grievances; staff bullying and harassment claims but not including a concern of a child protection nature) arises, it may be sufficient for the Principal/supervisor or delegated supervisor to advise the employee about the concern and discuss the issue with him/her with the objective of encouraging the employee to address the issue. It may be that an employee is not aware of the conduct that is required and a clear explanation from the Principal/supervisor is all that is necessary.

Before proceeding to implement the Performance Development procedures for non-performance, the Principal/supervisor must ensure that appropriate informal performance counseling of the employee has taken place. However, depending on the serious nature of the issue, the Principal/supervisor may need to address the matter more formally.

Mindful of appropriate industrial legislation and the relevant award and/or agreement, this procedure sets out to provide a framework for the implementation of disciplinary action in response to an employee's unsatisfactory performance or alleged serious misconduct, repeated cases of misconduct or gross misconduct. The successful implementation of this process will enhance the professional standards of teachers in general and assist staff to realise our diocesan vision to serve one another in justice. The disciplinary procedure is invoked to influence changes in behaviour, word and deed, to achieve positive outcomes for all.

The procedures described in this document may also be applied after determinations have been made pursuant to the NSW child protection legislation.

## **2. FRAMEWORK**

The Catholic Schools Office is committed to the development of Diocesan schools within Lismore as faith and educational communities which:

- subscribe to the document Foundational Beliefs and Practices – The Essential Framework
- take as their foundation the person and gospel of Jesus Christ
- educate and form students in Catholic discipleship
- integrate faith with life and contemporary culture
- foster the dignity and development of each person
- subscribe to a Catholic world view in word and deed

In light of this commitment, all staff in schools are encouraged to work together to create a culture and environment characterised by mutual respect, justice and life-giving relationships. In implementing a disciplinary process to address conduct which impedes the provision of quality teaching and learning and service to schools, school management will endeavour to provide formative and developmental opportunities to assist staff.

### **3. RESPONSIBILITIES**

#### **i. Employee Responsibilities**

Employees in diocesan schools have a responsibility to:

- actively participate in the process for addressing performance and disciplinary matters in a timely and reasonable manner;
- monitor and enhance their work performance according to the responsibilities in their roles;
- participate in professional assistance to address areas of concern if required;
- work cooperatively with colleagues;
- engage in critical reflection on their practice with colleagues;
- be aware of school and system expectations as to appropriate practice, conduct and performance;
- strive to create a safe and supportive environment encouraging of educational excellence;
- take responsibility for their own professional learning; and
- comply with CSO policies and other relevant legislation, and to understand and exhibit the standards of behavior and performance expected of them.

#### **ii. Principals / Supervisors Responsibilities**

Take responsibility for the educational and human resource leadership of their teams. They are to ensure effective leadership and management of staff by promoting a collaborative culture and fostering professional growth. Specifically, they have a responsibility to:

- supervise teaching and learning staff to support effective delivery of the curriculum to achieve optimal learning outcomes for students;
- facilitate the professional development of staff;
- identify and assist staff whose performance is not conducive to quality outcomes;
- utilise a range of informal supervisory measures with a staff member prior to advising them that a formal development process is required;
- engage professionally in processes with staff whose performance is not satisfactory;
- implement this Procedure promptly with staff whose performance is unsatisfactory or when instances of serious misconduct arise;
- identify and promptly refer (to the CSO School Resources Services(SRS) team) issues of a child protection nature (i.e. concerns or allegations of inappropriate physical contact, psychologically harmful practices, sexual misconduct, or neglect);
- adhere to all procedures associated with this document; and
- ensure all staff are aware of and have access to this procedure.

### **4. RELATED LEGISLATION POLICIES, PROCEDURES, INDUSTRIAL AWARDS / ENTERPRISE AGREEMENTS**

- NSW and ACT Catholic Systemic Schools Enterprise Agreement 2015
- School Handbook.
- CSO Child Protection Policy and Procedures.
- School Policies
- CSO Privacy Policy
- CSO OH&S Policy
- CSO Discrimination, Harassment and Bullying in the Workplace Policy and Standard Operating Procedures
- Guidelines for Professional Conduct in the Protection of Children and Young People
- Fair Work Act 2009

## 5. CONTACT PERSON

Assistant Director – School Resources Services

## 6. REVIEW

The process will be reviewed in December 2015.

## 7. IMPLEMENTATION OF THE PROCESS

This process may be implemented under the direction of the Director of Catholic Schools or the Assistant Director - School Resource Services.

It is important to note that performance or conduct issues can be addressed at any one of the following stages, this procedure may be invoked depending on the seriousness of the breach of performance or conduct.

The three approaches available for addressing matters of concern are: -

1. *Performance Counseling*
  2. *Performance Development Procedures*
  3. *Employee Disciplinary Procedure for Unsatisfactory Performance or Misconduct*
1. During the normal course of employment employees are required to perform at a level and standard that meets the requirements of the role. In the event that those requirements are not met the Principal/supervisor will make every effort to ensure that the employee has a clear understanding of the expectations and will do so in a supportive and informal manner. Such a process is referred to as *Performance Counseling*. This process negates the need to involve third parties or formal disciplinary processes and is, in the main, managed in a rather informal and collegial manner.
  2. When the usual supervisory processes and day-to-day management or performance counseling approaches have not been successful in resolving instances of unsatisfactory performance or conduct of an employee, the *Performance Development Procedures* will be implemented.
  3. When the above performance development procedure has not resulted in satisfactory performance being achieved or the employee's behavior or conduct warrants further investigation the *Employee Disciplinary Procedure for Unsatisfactory Performance or Misconduct* will be implemented.

The procedures described in this document may also be applied after determinations have been made pursuant to the NSW child protection legislation. The details of procedures for responding to concerns of a child protection nature are set out in the CSO Child Protection Policy and Procedures.

This procedure will be used where a formal investigation and disciplinary process is required for allegations of discrimination, harassment and bullying. Refer to Discrimination, Harassment and Bullying in the Workplace Policy.

Employees are generally bound by their contract of employment outside of work hours as well as during hours of work. Acts of misconduct at employer functions, whilst unpaid and out of work hours, may still be subject to disciplinary action. For example, unpaid social functions.

All performance or conduct related concerns will be dealt with in accordance with the following:

- be managed confidentially, respectful of the persons involved;
- be addressed in a timely and effective manner;
- Natural justice by ensuring that a person facing a disciplinary process is provided with sufficient detail to respond to the matter and free from bias;
- ensure that all parties in a disciplinary process are treated fairly and impartially; and
- Procedural fairness by ensuring the relevant procedures are fair and consistently adopted.

## **8. ROLES IN THE PROCESS**

### **Supervisor**

Supervisor refers to any person who has overall responsibility for employee's performance, conduct or behaviour.

In the CSO context Supervisor means Director, Assistant Director, Head of Department or Consultant who has responsibility for the management of others.

In schools the supervisor is the person the employee reports to in day to day matters (e.g. Head of Department, Year Coordinator or Leaders of the different KLAs). In this instance, the supervisor advises the Principal on details relating to the employee's role, performance and expected outcomes.

All disciplinary proceedings in regard to school staff will be with the involvement of the Principal. The supervisor reviews the employee's performance during the process and provides the Principal with reports as required.

### **Principal**

Within schools, the responsibility for the overall management of the performance of staff rests with the Principal. In the case of Principals, the responsibility rests with the CSO Education Consultant in consultation with Assistant Director and/or Director of Catholic Schools.

### **Support Person**

The support person is a person invited by an employee to accompany them in the capacity as a witness in a formal disciplinary interview. An employee can choose whoever they want as their support person such as a union representative/delegate, family member, friend or another employee.

### **CSO Staff**

Any of the following Catholic Schools Staff may be included in the process for addressing employee performance and disciplinary matters.

Director of Catholic Schools  
Assistant Directors of Catholic Schools  
Catholic Schools Office Consultant  
Catholic Schools Officer

## **STEP 1: PERFORMANCE COUNSELING PROCEDURES**

### **Performance Counseling**

Counseling provides an informal opportunity for supervisors and employees to correct problem behaviours or underperformance and to improve individual employee performance.

To be successful, performance counseling should be conducted in a spirit of collegiality and emphasize support and professional development. It should be commenced at an early stage when an issue arises or first becomes known to the supervisor. Pro-active intervention can often prevent a problem from escalating. The process of informal counseling is designed to resolve issues at an early stage with a view to avoiding the necessity to move to more formal procedures.

The expected outcome of counseling is in most circumstances an improvement in work performance or conduct. Performance counseling may occur over a relative short period of time and should ordinarily not be extended beyond six weeks.

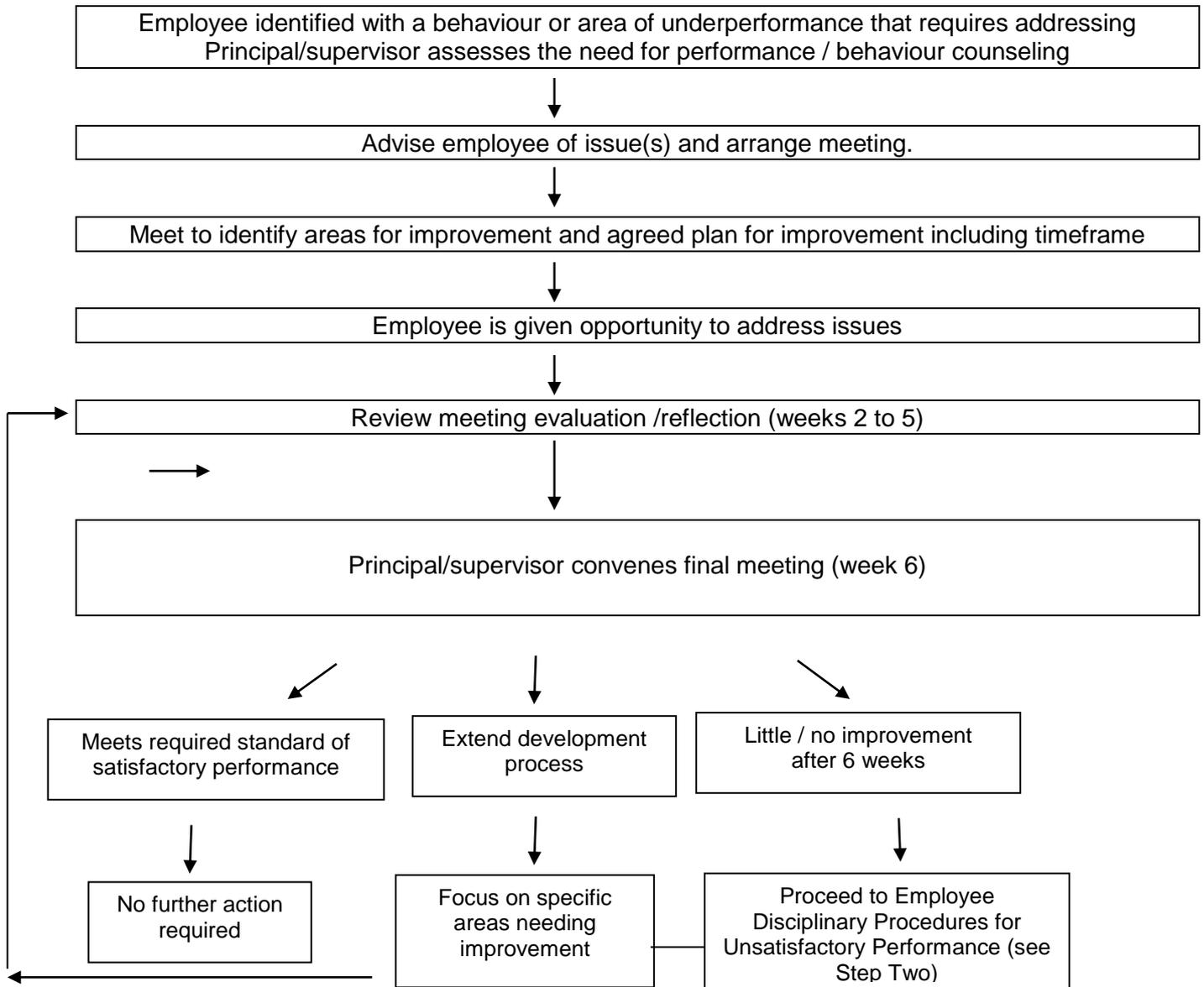
Performance counseling meetings will normally involve the direct supervisor and the employee. Normally it is sufficient for the supervisor to advise the employee of such a meeting verbally, giving reasonable notice, however this advice may also be provided to the employee in writing. Meetings should be held in private and without distraction or disruptions. The employee has the option of bringing a support person to the meeting and the supervisor may have an observer present.

To achieve the best results, counseling should be based on open, two-way communication. When meeting with the employee, the supervisor should clearly identify the issue that has emerged. The work or conduct expected of the employee should be clearly articulated and appropriate assistance to enable the employee to meet the expected standards should be provided. The discussion should be framed around ways to improve performance rather than focusing solely on problems or perceived shortcomings. During the meeting the employee should be provided with an opportunity to respond and desired outcomes explained clearly. The parties can then move to finding a resolution within a reasonable time frame. Agreed outcomes should be made available to the employee in writing as soon as practicable after the meeting.

Supervisors should seek guidance from the principal or Catholic Schools Office Human Resources Consultant.

Should the employee not demonstrate improvement in the behaviour or underperformance the supervisor will utilize the Performance Development Procedures – Step 2.

## PERFORMANCE COUNSELLING FLOWCHART



## **STEP 2: PERFORMANCE DEVELOPMENT PROCEDURES**

### **Introduction**

Performance Development Procedures will be implemented to address a behavior or area of underperformance which have not been resolved under usual supervisory processes or under the performance counseling procedure in step one, or is considered serious to invoke step at first instance.

The following procedure is designed to be completed in a reasonable and timely manner (generally over a ten-week period). It is recognised, however, because of varying circumstances, that the timeline may need to be adjusted.

### **Assessing the need for the performance development process**

Prior to a development process taking place, an employee may expect that his/her Principal or supervisor would have already raised any concerns with him/her.

If there are ongoing concerns, the employee's supervisor discusses the areas of concern with the Principal, Education Consultant, Assistant Director – School Resources Services or Human Resources Consultant and clearly identifies:

- areas of alleged behavior or area of underperformance;
- strategies that have already been used to try to address the concerns; and
- expected outcomes as to performance development to be achieved in the future including an appropriate timeframe.

### **Advising the employee of the need for the development process**

The Principal/ Supervisor meet with the employee concerned to:

- advise that it is necessary for a formal performance development process to be initiated due to unresolved issues from Performance Counseling or matters that require development;
- identify briefly the behavior or area of underperformance requiring development;
- arrange a suitable time for the initial meeting providing reasonable notice;
- advise who will be present at the meeting eg. Principal, employee, supervisor;
- advise that the employee has the option to bring a support person;

### **Initial Meeting to plan the development process**

This meeting will usually be attended by the Principal/ supervisor, employee and support person (if desired). The following matters are addressed at this meeting:

- Principal/supervisor explains the context of the meeting and provides an overview of the *Performance Development Procedures*
- *The Principal/supervisor advises employee of issues that have not been addressed since the last Performance Counseling meeting* or the behavior or area of underperformance
- Principal/supervisor advises the employee of the areas needing improvement and provides evidence to support the need for development (eg. student workbooks, assessment results, a summary of any concerns raised in letters from parents etc.)
- employee puts forward his /her perspective or mitigation on the issues raised

- Principal/supervisor makes any necessary adjustment to the areas identified in light of the employee's response
- development strategies are negotiated which may include, but are not limited to:
  - professional study or skilling
  - professional dialogue/reflection practices
  - professional reading
  - journaling
  - counseling, mentoring or coaching
  - collegial teaching
  - observations/class visit/s by principal/supervisor
  - observations of the principal/supervisor
  - review meetings
- a timeframe for the process is negotiated (usually with a two-week timeframe).
- the Principal/supervisor identifies the outcomes that are expected for performance to be considered satisfactory, taking into account the employee's input.
- where appropriate the principal/supervisor will appoint a supervisor to directly oversee the implementation of a Performance Development Plan.

The performance development plan is provided to the employee by the principal/supervisor as soon as practicable after the meeting.

### **Commencing the Development Process**

The negotiated performance development plan is implemented over a reasonable timeframe (generally two weeks as a guide) referred to as the development period.. Without limiting other development strategies, the period may include scheduled workplace visits by the principal/supervisor to monitor performance. **No more than one workplace visit per week will be scheduled unless otherwise agreed.** At the end of this period a review meeting is held.

### **Review meeting**

At the completion of the development period, the employee, support person, principal/supervisor meet. The meeting is chaired by the principal/supervisor who brings to the meeting a summary of progress to date. At the review meeting the following matters are discussed:

- areas identified as needing development are revisited
- improvements are identified and affirmed
- any areas that have not improved are identified, examples are provided
- if areas have not improved there is discussion and analysis of why there has not been improvement
- current development strategies are reviewed and if necessary changed
- a timeframe is negotiated for the next development period (generally two weeks as a guide)

The meeting is conducted in a spirit of collegial support and honest dialogue. It is essential to locate specific performance issues e.g. classroom management within broader educational concepts such as "how children/young people learn."

If there has been little or no development, the principal/supervisor advises the employee of the seriousness of the matter and that change in behavior or area of underperformance is required otherwise it may be necessary to proceed with a disciplinary process.

Following the meeting the employee will be provided with the revised performance development plan.

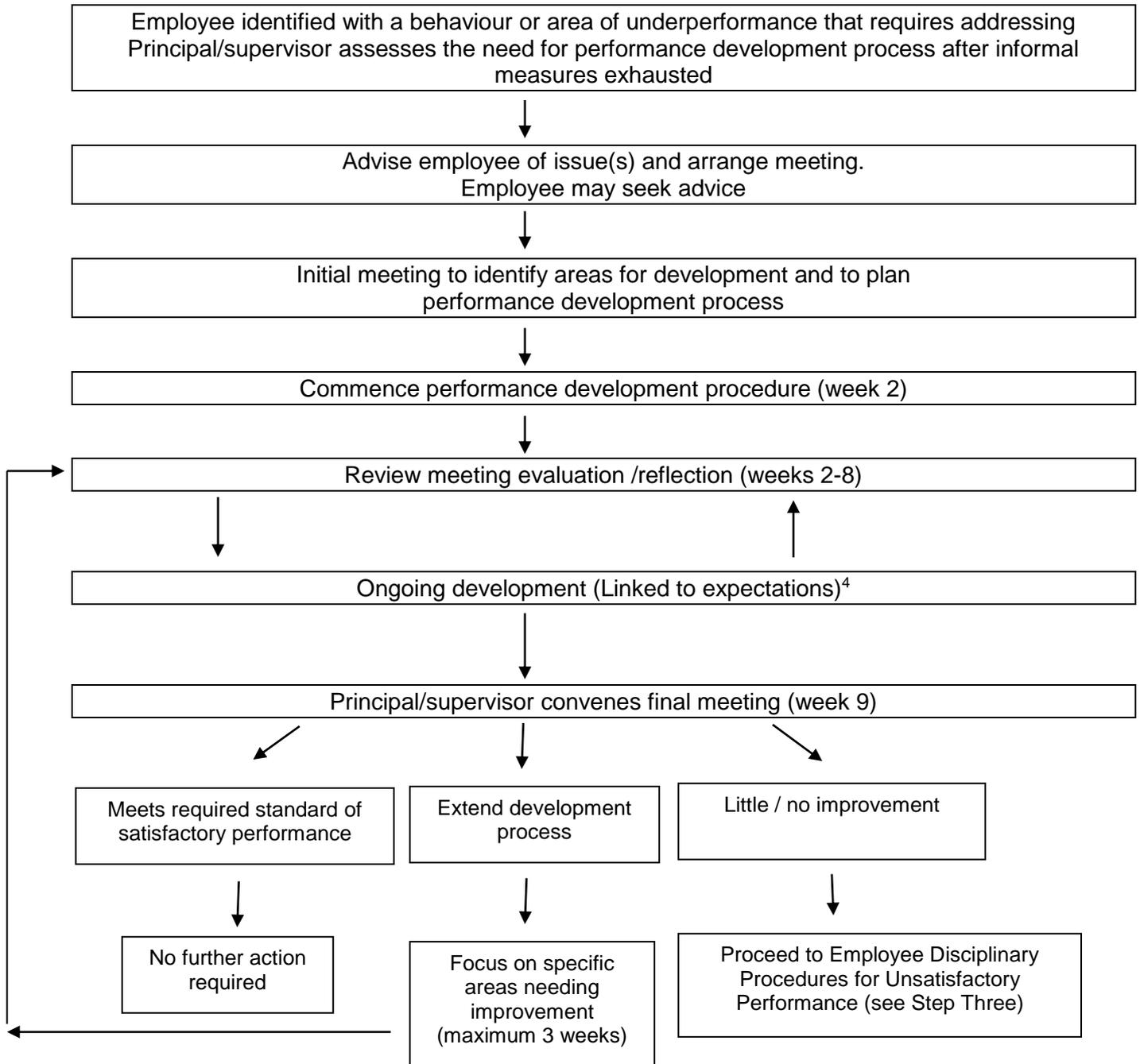
## Ongoing development and further review meetings

During the next **four weeks** (approximately) the development program continues with one or two further review meetings as outlined above, being held. At the end of the last review meeting a final review meeting is agreed upon, **this should be after week 7 and before week 9**.

The purpose of the final review meeting is to discuss the outcome of the development process:

- a) If the concerns are now addressed satisfactorily, the principal/supervisor affirms the development that has occurred, checks if any ongoing support mechanisms are required and thanks the employee for their commitment to the process.
- b) If there is improvement but an area(s) still requires further development, the principal/supervisor extends the process for a further but limited period of **2-3 weeks**. During this time attention is focused on the specific area(s) needing improvement.
- c) If there is little or no improvement, the principal/supervisor is to confer with the Assistant Director – School Resources Officer, the Human Resources Consultant or Education Consultant before invoking the formal Disciplinary Procedures for Unsatisfactory Performance (appendix 3).

## PERFORMANCE DEVELOPMENT PROCESS FLOWCHART



<sup>4</sup> The supervisor in consultation with the employee may set a limit to the number of reviews to address the concerns. The supervisor will inform the employee that the final review will occur at the next meeting.

### **STEP 3: EMPLOYEE DISCIPLINARY PROCEDURES FOR UNSATISFACTORY PERFORMANCE OR MISCONDUCT**

#### **Introduction**

If, following the development process outlined in the *Performance Development Procedures*, the behavior or area of underperformance does not improve, or there is an allegation of misconduct, a formal disciplinary process will commence.

Examples of misconduct are, but not limited to:

- Unsatisfactory work performance,
- Serious breaches of school or system policy
- Serious neglect of duty
- Behaviour of a discriminatory or offensive nature
- Sexual harassment
- Workplace bullying
- Absenteeism or poor time keeping
- Security procedure breaches
- Use of obscene, abusive or offensive language
- Failure to observe occupational health and safety rules
- Being affected by drugs or alcohol in the workplace, except those prescribed as medication by a qualified medical practitioner

Examples of serious misconduct are, but not limited to:

- Wilful disobedience of a lawful direction or refusal to carry out a lawful and reasonable instruction that is consistent with the employee's contract
- Conduct that causes imminent and serious risk to the health or safety of a person or the reputation or viability of CSO's business
- Conduct which includes an employee, in the course of their employment, engaging in theft, fraud, bullying, harassment or assault.

#### **Little / no improvement following performance development process**

In the event that there is little or no improvement in performance through the *Performance Development* process, the principal/supervisor briefs the Assistant Director - School Resources Services, or Director of Catholic Schools as to the nature of the behavior or area of underperformance, describing the development process that has been followed.

The principal/supervisor will instigate the disciplinary process provided that:

- the development process within the *Performance Development Procedures* has been followed appropriately; and
- the nature of the behavior or area of underperformance is sufficiently serious to warrant the disciplinary process.

#### **Report of / and investigation into alleged misconduct**

On receipt of a report of serious misconduct, the principal/supervisor advises the Director, Assistant Director – School Resources Services or Human Resources Consultant. An investigation into the allegation will be conducted. The investigation will include interviews with the employee, the assessment of relevant documentation and, where applicable, the interviewing of witnesses.

## **Investigation meeting**

The principal/supervisor advises the employee of the decision to invoke the disciplinary process in writing. However verbal notice may be given in circumstances that warrant it such as the need to commit to a timeframe or the seriousness of the issue at hand.

An invitation to a fact finding investigation meeting is provided to the employee detailing: -

- the nature of the behavior, underperformance or alleged misconduct;
- the seriousness of the matter;
- the employee's right to have a support person present;
- arrangements for an initial meeting/investigation to provide the employee with an opportunity to respond providing reasonable notice;
- matters to be discussed at the meeting;
- an offer of counseling through the employee assistance program;
- that failure to attend such a meeting will constitute a failure to follow a reasonable request and is considered to frustrate the process of natural justice.

*In a matter of alleged misconduct, whilst the investigation is being conducted, a risk assessment decision may be taken by the principal/supervisor in consultation with the Assistant Director – School Resources Services that the employee remain out of the workplace on full pay or without pay (subject to the relevant award where applicable) pending finalisation of the investigation.*

## **Employee is interviewed**

- The principal/supervisor either alone or with the Assistant Director – School Resources Services or Human Resources Consultant meets with the employee on reasonable notice (usually 24 hours) to advise of the nature of the behavior, area of underperformance or alleged misconduct and to provide an opportunity for the person to respond or provide a statement. The employee is invited to have a support person present. During the interview the employee is invited to respond to the issues and to raise any other matters which the employee considers to be relevant;

Following this meeting the principal/supervisor may need to investigate the matter further and interviews with witnesses will be scheduled by the principal/supervisor.

## **Preliminary Finding**

### ***Unsatisfactory Performance***

If the principal/supervisor find the employee's explanation satisfactory then no further action is required. The finding will be confirmed in writing to the employee.

If the principal/supervisor believes further investigation is required due to unsatisfactory performance then disciplinary action will be invoked. The principal/supervisor informs the employee in writing and arranges a disciplinary meeting.

### ***Misconduct***

If the employee acknowledges that the alleged serious misconduct occurred the Director of Catholic Schools is briefed.

If the employee does not acknowledge that the alleged misconduct occurred, on conclusion of the investigation, Assistant Director – School Resources Services and/or Human Resources Consultant briefs the Director of Catholic Schools regarding the investigation. The principal/supervisor in

consultation with the Assistant Director – School Resources Services and/or the Human Resources Consultant determines one of the following on the balance of probabilities:

- a) **That the allegation is false**  
If it is proven that the allegation is false, vexatious or malicious the principal/supervisor works with the employee who has been accused to mediate an appropriate resolution.  
  
An employee or student who makes a false, vexatious or malicious complaint may be subject to investigation and disciplinary action.
- b) **That the allegation is not sustained and no further action is required**  
If the allegation of misconduct is not sustained, the principal/supervisor discusses with the employee how resolution of the matter may be achieved.
- c) **A preliminary finding that the allegation is sustained and a recommendation is made regarding appropriate disciplinary action**

If, having considered all facts, the principal/supervisor and/or Assistant Director – School Resources Services or Human Resources Consultant determines as a preliminary finding that the allegation is sustained and disciplinary action is required, the employee will be advised in writing of this and invited to attend a disciplinary meeting.

### **Disciplinary Meeting**

The principal/supervisor must provide an employee who is to attend a disciplinary meeting at least 24 hours' notice of such a meeting and the notice must be in writing. The employee must be provided the reasons for the meeting including the allegations to be answered; the date, time and venue for the meeting; details of who will be present at the meeting; the employee's right to have a support person present and the possible consequences of the meeting. With the agreement of the employee and the availability of a support person the timeframe may be brought forward to suit the parties concerned.

In the event that the employee is not able to attend the meeting at the scheduled date and time because they are unable to have a support person present the meeting will be rescheduled to occur within 7 calendar days at a time and date that is suitable. All reasonable steps must be made on both sides to ensure that a meeting date and time is agreed.

Failure to attend such a scheduled meeting will constitute a failure to follow a reasonable request and is considered to frustrate the process of natural justice. The principal/supervisor after discussions with the Assistant Director – School Resources Services and/or Human Resources Consultant will be left with no alternative but to make a determination of an appropriate outcome based on the facts available to him/her at the time.

The issues addressed at the meeting are as follows:

- The principal/supervisor is to focus on those issues identified in the invitation letter given to the employee to attend the disciplinary meeting.
- The principal/supervisor is not obliged to divulge the personal details of those witnesses who provided statements to the principal/supervisor during the investigation of the matters put to the employee.
- The employee responds to issues raised in the letter of invitation to attend a disciplinary meeting.
- The employee is encouraged to provide a full, frank and clear explanation of events to explain his/her actions.

## **Disciplinary Outcome**

The principal/supervisor is to apply his/her mind to all the facts (from the investigation and disciplinary meeting) before making a final determination on the outcome. The principal/supervisor is to seek counsel from the Assistant Director – School Resources Services, Human Resources Consultant before a final determination is made.

If the principal/supervisor determine that performance or conduct is satisfactory, no further action is necessary. The employee will be informed of this in writing.

If, having considered all matters, the principal/supervisor determines that performance or conduct is unsatisfactory and a disciplinary sanction is required, the employee will be advised in writing:

- the level of warning to be applied (first written warning, second written warning for a repeated breach, final written warning for a severe breach or serious misconduct and dismissal for gross misconduct)
- any additional sanction to be applied (demotion, removal from position, period of unpaid suspension).
- the support initiatives that will apply and the disciplinary action that will be taken; and
- monitoring and review to be undertaken by the principal/supervisor

## **Notification of intention to terminate**

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 Director of Schools. The Assistant Director - School Resources Services and/or the Human Resources Consultant meets with the Director to provide a full briefing on the disciplinary process that has been followed;
- in reaching a decision, the Director 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.
- the employee will be advised in writing and, as soon as practicable, a meeting will be organized on reasonable notice (24 hours). The employee will be encouraged to have a support person present. At this meeting the principal/supervisor with the Assistant Director – School Resources will:
  - confirm that the employee had the opportunity to respond to the details of the unsatisfactory performance or serious misconduct
  - confirm that the Director 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. counseling or outplacement)
    - arrange for the finalisation of any legal or industrial requirements and
  - advise how termination pay will be facilitated.

## **Record Keeping**

All documentation relating to a disciplinary process is kept in a confidential file in the office of the principal/supervisor. The file may only be accessed with the authority of the principal/supervisor.

Any person at the meeting are free to take notes.

**Confidentiality**

Confidentiality must be maintained throughout the process for addressing employee performance and disciplinary matters.

A breach of confidentiality will be subject to further investigation and disciplinary action.

**EMPLOYEE DISCIPLINARY PROCEDURE FOR UNSATISFACTORY PERFORMANCE/MISCONDUCT FLOWCHART**

