



MANAGING UNDERPERFORMANCE & MISCONDUCT POLICY

Best Practice – Quality Area 4

PURPOSE

This policy sets out the procedures and guidelines for managing underperformance and conduct issues.

The purpose of this policy is to guide the Educational Leader, HR Coordinator(s) and Executive Committee of Rowen Street Kindergarten Inc. in managing problems or concerns about an employee's work performance or conduct.

Issues related to employee work performance or conduct will normally be raised and addressed, in the first instance, by the Educational Leader through day to day feedback and interactions with employees, before proceeding to a formal and structured performance management procedure that will involve the HR Coordinator(s) and RSK President (or other identified members of the Executive Committee).

The rights of all parties to confidentiality must be respected. The procedures set out in this policy will be implemented within the context of rights and obligations on both employers and employees under relevant awards, industrial agreements or legislation.

SCOPE

- This policy applies to the employer (the Committee of Management of Rowen Street Kindergarten Inc.) and all employees.
- In implementing this policy, the employer (specifically, the Educational Leader, HR Coordinator(s) and RSK President) will act in accordance with the requirements specified under relevant awards, industrial agreements or legislation, and in a fair and equitable manner.
- Employees are to act in accordance with this policy.

PROCEDURES

Conflict of interest

The Educational Leader, Executive Committee members, HR Coordinator(s) and any employees who have lodged a complaint or have been personally involved in the matter should refrain from involvement with the investigation and decision-making processes. In the event of a conflict of interest, the RSK President may select a committee member (or two) to support the underperformance procedures.

In the event of performance or conduct issue that relates to the Educational Leader, the investigation and managing underperformance procedure will be managed by the RSK President, HR Coordinator(s) and a selected Executive Committee member.

Investigation and verification of the issues to be raised

In relation to complaints about an employee's work performance or conduct the employer will ensure that the issues and concerns can be substantiated. They will investigate the nature of the complaint and determine best course of action. This includes identifying appropriate and specific examples of those issues or concerns prior to any action being taken. It may also include consideration of any written complaints.

Executive approval

No formal disciplinary action in relation to complaints or work performance/conduct issues of an employee will occur without the prior approval of the RSK President and/or Executive Committee. All parties involved will respect the confidentiality of the information discussed.

Record of meetings

Where appropriate the content and any specific outcomes or requirements identified during meetings with an employee relating to underperformance or conduct will be recorded in writing and a copy given to the employee. In situations where interviews or meetings are conducted with employees as part of the underperformance procedure, an appropriate written record of the meeting will be prepared by the HR Coordinator(s) and a copy given to the employee.

MANAGING UNDERPERFORMANCE PROCEDURE

Step 1 - Identify the problem

It is important to understand the key drivers of underperformance or conduct issues related to an employee. Through discussion and investigation of the issues raised, the Educational Leader together with the HR Coordinator(s) and/or RSK President need to clearly identify the performance or conduct issue. This may involve:

- Interviews with employees, parents or committee members.
- Review of relevant materials (e.g. meeting minutes, emails, performance reviews, written complaints, etc).

Step 2 — Assess and analyse the problem

The Educational Leader together with the HR Coordinator(s) and/or RSK President should determine:

- How serious the problem is.

- How long the problem has existed.
- How wide the gap is between what is expected and what is being delivered.
- Who needs to be involved in the performance meeting(s) (i.e. Educational Leader, HR Coordinator(s), RSK President or any other identified members of staff or the committee).

Once the problem has been identified and assessed, a meeting should be organised with the employee to discuss the problem. Ideally this would be arranged by the Educational Leader, depending on conflict of interest. Otherwise the HR Coordinator(s) and/or RSK President.

The employee must be notified in writing of the date, time and venue of the meeting and the nature of issues to be discussed/complaints made. They may wish to have a support person of their choice or a union representative to the meeting.

Step 3 — Meet with the employee to discuss the problem

It is important that the meeting takes place in private and in an environment that is comfortable and nonthreatening, away from distractions and interruptions.

The meeting should begin by holding a discussion with the employee to explain the problem in specific terms using specific examples (times, dates etc.). From this conversation, the employee should be able to clearly understand:

- what the problem is
- why it is a problem
- how it impacts on the workplace, and
- why there is a concern.

The employer should discuss the outcomes they wish to achieve from the meeting. There should be an open discussion and the employee should have an opportunity to have their point of view heard and duly considered. The employer should listen to the explanation of why the problem has occurred or to any other comments the employee makes.

If a warning is to be issued to the employee, refer to 'Issuing a Warning'.

Step 4 — Jointly devise a solution

Where possible, it is important that a solution is jointly devised with the employee. An employee who has contributed to the solution will be more likely to accept and act on it.

A clear plan of action should be developed with the employee to implement the solution. This can be in the form of a **performance agreement or action plan** and should:

- Reflect an understanding of the performance expectations and what is to be achieved over a specified time period.
- Clarify roles and responsibilities.
- Include strategies for training and professional development.
- Include timeframes for improvement.

A date should be set for another meeting with the employee to review progress and discuss the employee's performance against the agreed action plan.

Step 5 — Monitor performance

The employer should monitor the employee's performance and continue to provide feedback and encouragement.

A meeting to review and discuss the employee's performance should be held even if there is no longer an issue. This enables both parties to acknowledge that the issue has been resolved.

More serious action may need to be taken if the employee's performance does not improve including further counselling, issuing formal warnings and ultimately if the issue cannot be resolved, termination of employment.

ISSUING A FORMAL WARNING

Warning letters are useful to confirm and address a serious performance or conduct issues with an employee. A warning letter is usually issued to an employee after the employer has met with them to discuss the problem (i.e. after Step 3, if the performance or conduct issue is deemed serious enough). Following this process can help resolve issues before the situation becomes worse.

There is no legal requirement to provide formal written warnings or a certain number of warnings. However, to determine whether an employee was unfairly dismissed, the Fair Work Commission will consider if the employee was:

- warned about performance or conduct issues, and
- provided a reasonable opportunity to improve their performance and conduct.

After following Steps 1 to 3 of the Managing Underperformance Procedure, a letter of warning should be prepared that includes:

- Details of the performance or conduct issue of concern.
- What has been discussed with the employee about the issue.
- What the employer will do to assist.
- An action plan of what steps the employee needs to take.
- A reasonable timeframe in which the changes or improvements need to occur.

Ensure that the employee receives the warning letter and document the details of providing the letter (e.g. the time, date, who was there, what was said, etc.). It is important that the employee reads and understands this letter and the consequences of not adhering to the actions set out (i.e. another warning, termination of employment, etc.). A copy of the letter should also be kept on their records.

UNACCEPTABLE CONDUCT BY EMPLOYEES

The employer is required to promote an environment that is free of any harassment, intimidation or abuse. Employees shall not treat children, parents, visitors or other employees in a manner involving any form of harassment, intimidation or any treatment of a demeaning, threatening or abusive manner. Staff will at all times act in accordance with the requirements of the *Children's Services Act 1996* and *Children's Services Regulations 2009*.

Conduct that falls within the scope of unacceptable behaviour that justifies immediate disciplinary action and that may result in termination of employment including instant dismissal, includes, but is not limited to:

- verbal abuse or threats
- any form of physical abuse or corporal punishment
- remarks that could be seen as offensive or constitute sexual harassment
- intimidatory behaviour
- treatment, particularly of children, that involves frightening, threatening or demeaning techniques
- a serious breach of the *Children's Services Act 1996* or *Children's Services Regulations 2009*.

Specific examples relating to an early childhood service include:

- failing to take every reasonable precaution to protect children from any hazard likely to cause injury
- failing to ensure that any child is adequately supervised
- subjecting children to any form of corporal punishment
- any discipline of children that is unreasonable in the circumstances
- endangering the health and safety of the children
- fraud and theft
- attendance at work while under the influence of alcohol or non-prescription drugs.

In the event of a suspected breach of this policy related to unacceptable conduct, an investigation will be undertaken by the Educational Leader, HR Coordinator(s) and RSK President. If there is a conflict of interest with the parties involved, the Executive Committee may appoint a committee member to help conduct the investigation.

Where the employer has reasonable grounds to conclude that a breach of this policy may have occurred, the employee may be suspended from duty without loss of ordinary pay, pending an investigation. The employee will be given an opportunity to respond to the matters raised before the employer makes any final decision.

The Executive Committee will meet as soon as possible after the investigation has been completed and, based on the report received from the subcommittee, will decide action to be taken and refer this back to the subcommittee for implementation.

The employer will notify the employee in writing of the outcome of the investigation and any decision or actions to be taken by the employer.

AUTHORISATION

This policy was approved on 12 August 2019 by the Committee of Management of Rowen Street Kindergarten Inc.

REVIEW DATE: AUGUST 2023