

# Managing Poor Work Performance & Gross Misconduct Policy

## Policy Statement & Commitments

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Brunswick East Primary School Outside School hours Care Service (BEPS OSHC Service) provides support for, and management of educators whose work performance compromises the quality of the provision of its core services.

The OSHC Management Sub-committee employs educators through processes that identify the knowledge, skills and qualifications of applicants. Where disciplinary action against an educator is necessary, the OSHC Coordinator shall notify the educator of the reason. The first warning will be verbal and will be recorded on the educator's personal file. A nominated support person shall be present if desired by either party.

### The service is committed to:

- providing educators with a working environment that promotes positive relationships, administers professional support and development, and determine policies and procedures which promote professionalism in the provision of a quality education and care service for children
- providing a clear grievance process to the community which encourages concerns to be raised in ways that continue to build relationships and promote positive collaboration
- identifying ways to support, give advice and resources to build the capacity of individuals
- implementing a procedure for managing poor work performance and gross misconduct of educators.

## Definitions

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**Poor work performance** – When an educator is not performing their work at the professional standard expected by the service, with consideration of the service's policy and procedures, the Education and Care Services National Law (and any other legislative instrument applicable to their employment), as well as with respect to their position description and professional responsibilities as employees of the service.

**Gross misconduct** – When an educator:

Approved	February 2019	Review date:	February 2020
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- intentionally endangers life or commits a serious breach of occupational safety and health procedures
- Is found stealing money or goods from the service or host school
- reports to work under the influence of drugs or alcohol
- inflicts or threatens any stakeholder to the service including children and families with violence, sexual abuse or harassment
- engages in any other kind of behaviour that strikes at the heart of the employment relationship.

## **Procedures**

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The BEPS OSHC Coordinator must advise an OSHC Management Sub-committee member (Chairperson) and the School Principal that a verbal warning had been issued, within 24 hours of it being issued. A witness, usually the Staff Liaison Officer, must be present at the issue of the warning. When a verbal warning is issued the BEPS OSHC Coordinator must ensure the educator understands the issue. For example the issue may involve inappropriate behaviour, actions or attitude. The coordinator must also explain the specific reason for the verbal warning. The BEPS OSHC Coordinator must ascertain if the educator has any difficulties in complying with the Service’s policies and procedures, the Education & Care Services National Regulations 2011, or their professional responsibilities outlined in their position description.

The BEPS OSHC Coordinator must introduce strategies to improve the educator's unsatisfactory work performance or practice. The educator will be given a reasonable time frame in which to show improvement in their performance and actions. If further incidents occur requiring disciplinary action, two warnings will be issued in writing after which the educator faces dismissal. If a final warning is to be given it will be issued in writing. If required by either party a copy of the warning will be sent to the relevant union. If no further incidents occur no further action will be taken, and the record of the verbal warning will be removed from their personal file after 12 months.

If the problem continues, the BEPS OSHC Coordinator and an OSHC Management Sub-committee member will discuss the matter with the educator concerned. In the event of the mater recurring, then the educator may be terminated from their position. No dismissal shall take place without the authority of the School Principal.

Dismissal may still occur for acts of serious and wilful gross misconduct. In the event of such an event occurring, the educator shall be suspended on full pay until the OSHC Management Sub-committee meets to hear and determine the case.

If a dispute should arise over the disciplinary action taken, the matter should be referred to Fair Work Australia for resolution.

All new educators shall be handed a copy of these procedures on commencement of employment.

<b>Approved</b>	<i>February 2019</i>	<b>Review date:</b>	<i>February 2020</i>
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**Stage 1 – Verbal Warning**

- The educator will be verbally informed of any complaint concerning their work performance or conduct as soon as possible. The educator will be given the opportunity to respond to the concerns expressed and changes required.
- An informal interview will be held, attended by the educator and one or more of the following persons – BEPS OSHC Coordinator and/or Chair of the OSHC Management Sub-committee. The interview will not be minuted, however a record that the interview took place should be made.
- Complaints about the educator's work or conduct will be specific and relate to the job as summarised in the job description. The educator will be asked to respond to each concern.
  - If their response is satisfactory the discussion will end.
  - If their response is unsatisfactory, they will be told that their response fails to justify their conduct and an outline will be given to the educator on how they must improve their performance. A review period of 1-4 weeks is then set, depending on the particular circumstances.
- Any support or training deemed necessary for the educator will be identified and appropriate steps undertaken to implement them.

**Stage 2 – Written Warning**

- If the educator’s performance has not improved, the educator will be advised with reasonable notice of the date, time and reason for the second interview, which will be a formal documented interview. This will allow for the educator to arrange attendance by their chosen representative if desired.
- A formal documented interview will be held attended by the educator and their chosen representative, and one or more of the following persons: a nominated supervisor or BEPS OSHC Coordinator; an approved provider/employer representative. A copy of the record of the interview and written warning will be provided to the educator and one placed on the educator's file.
- The written warning will include:
  - specific details of the educator’s conduct or unacceptable performance standards
  - action that will be taken if the educator’s conduct does not improve or if they do not reach an acceptable standard of work-practice
  - the date of the subsequent performance review.

If the educator disagrees with the assessment, a right of written reply will also be attached to the file.

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**Stage 3 – Final Written Warning**

- The BEPS OSHC Coordinator, or Chair of the OSHC Management Sub-Committee, may conduct a second formal documented interview with the educator in which another written warning will be given. It will state that a continuing failure to improve after this interview will result in suspension or dismissal.
- All other procedures as set out in Stage 2 will be followed.

**Stage 4 – Termination of Employment**

- If the interviewing panel believe that the educator's performance has not improved after the Stage 3 interview, the educator will be invited to explain why they should not be dismissed, and to raise any issues that may warrant consideration.
- The interviewing panel will then decide whether to recommend to the OSHC Management Sub-committee whether:
  - alternative employment is available and should be offered, and if the educator does not accept then the approved provider may issue a notice of dismissal. If the educator accepts, a new contract is issued "without loss of service", or
  - employment should be terminated.
- A dismissal notice will include the effective date of dismissal, reasons for dismissal and termination payment as per award entitlement. The length of notice of dismissal, detailed in the Victorian Government Schools Agreement 2017 is between one and four weeks, depending on length of service weeks. An educator may be paid out in lieu of such notice.
- Prior to giving a dismissal notice the approved provider will conduct an unfair dismissal check to ensure the educator is not being dismissed in a manner that is harsh, unjust or unreasonable.

**Gross Misconduct**

- The OSHC Management Sub-committee will suspend the educator without loss of pay pending an internal investigation, which will be completed as soon as possible.
- The investigation may need to be completed by an independent investigator and /or police – in the cases of Misconduct due to abuse
- The written results of the internal investigation will be sent to the educator and an interview arranged to allow the educator to respond.
- The educator will be advised that they are welcome to have a representative at the interview if they wish.
- The interview will be attended by the BEPS OSHC Coordinator, an OSHC Management Sub-Committee member and/or representative, the educator and the educator’s representative if desired.

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- The educator will be advised formally of the findings of the investigation and asked to respond.
- The educator’s responses to the internal investigation results will be assessed according to the following guidelines:
  - If the educator’s responses are considered to be credible, the matter will either come to an end there and then, or a warning may be issued if appropriate.
  - If further investigation is required, then the above steps will be repeated.
  - If the educator’s responses are considered not to be credible, then a decision will be made to terminate immediately, with written confirmation to follow.
- It is not necessary to give the minimum notice or compensation in lieu of notice if the educator is guilty of misconduct, which would make it unreasonable to continue employment throughout the notice period. In this case salary shall be paid up to the time of dismissal only.

### **Fair Work Commission (FWC)**

The FWC is the national workplace relations tribunal. It is an independent body with the power to carry out a range of functions relating to:

- minimum wages and employment conditions
- enterprise bargaining
- industrial action
- dispute resolution
- termination of employment and other workplace matters.

Visit the website at [www.fwc.gov.au](http://www.fwc.gov.au) or phone 1300 799 675.

<b>Approved</b>	<i>February 2019</i>	<b>Review date:</b>	<i>February 2020</i>
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**Sources & Legislative References**

Department of Education & Training, *Victorian Government Schools – School Services Officer Agreement (2004)*  
[www.eduweb.vic.gov.au](http://www.eduweb.vic.gov.au)

National Professional Support Coordinator Alliance 2012, *Getting started with policies for the NQF: Policies in Practice template – Procedure for dealing with Gross Misconduct*, [www.pscalliance.org.au](http://www.pscalliance.org.au)

National Professional Support Coordinator Alliance 2012, *Getting started with policies for the NQF: Policies in Practice template – Procedures for Managing Poor Work Performance*, [www.pscalliance.org.au](http://www.pscalliance.org.au)

<i>Education and Care Services National Law Act 2010 (Vic) – Section 169, 301 (h) (m) (i)</i>
<i>Education &amp; Care Services National Regulations (2011) – Regulations 145, 147, 149, 151, 168(2)(iii), 70, 71, 181 &amp; 183</i>
<i>National Quality Standard for Early Childhood Education and Care &amp; School Age Care (2010) – Standard 7.3, Elements 7.1.2, 7.1.3, 7.1.5 &amp; 7.3.5</i>
<i>Information Privacy Act 2000 (Vic) – Management of personal information</i>
<i>Privacy Act 1988 (Cwlth) – Information Privacy Principles</i>
<i>Information Privacy Act 2000 (Vic) – Management of personal information</i>
<i>Health Records Act 2001 (Vic) – Personal Information</i>
<i>Fair Work Act 2009 (Cwlth.) – Fair Work Statement &amp; National Employment Standards</i>
<i>Victorian Accident Compensation Act 1985 – Insurance</i>
<i>The Accident Compensation (Work Cover Insurance) Act 1993 – Insurance</i>
<i>Working with Children Act Vic (2005)</i>
<i>Commonwealth Superannuation Guarantee (Administration) Act 1992</i>
<i>Victorian Charter of Human Rights &amp; Responsibilities (2011)</i>
<i>The Victorian Government Schools Agreement 2017</i>

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