

## Guidelines for Managing Complaints against Victorian Primary Schools Employees Policy

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### Rationale

A positive working environment is an integral component of a healthy, successful and fulfilling working environment. Every day, managers may deal with a range of challenges including workplace conflict, grievances, and policy issues. These matters should be handled in accordance with the needs and requirements of the particular school community and workplace, taking into account Department policy and best practice. The complaints processes are not intended to regulate the day-to-day management of ordinary workplace issues and challenges. Rather, they are to be used for dealing with complaints against employees or conduct which has come to the attention of the manager which ought to be dealt with as a complaint. Complaints against an employee may arise from:

- unprofessional conduct and/or poor performance
- allegations of aggressive, demeaning or uncooperative behaviour
- a particular incident
- allegations of unlawful discrimination (for example, discrimination on the ground of a protected attribute such as race, religious belief, disability, sexual orientation, gender, family responsibilities) or racial or religious vilification
- allegations of unlawful harassment, including sexual harassment
- allegations of bullying, as defined by Work Safe Victoria
- decisions made, or not made, by the manager that a complainant believes are unfair, unreasonable or inappropriate

The manager must ensure that a complaint is dealt with in a way that is both procedurally and substantively fair.

*It is important that all steps in the process are documented.*

The manager can provide advice regarding the process for making a complaint.

### 1. Purpose

#### **Complaints resolution processes**

The complaints resolution processes provide a framework for the resolution of complaints against employees. Complaints against employees should be dealt with promptly using the complaints resolution procedures as outlined:

**OUTCOMES**—Complaint dismissed, Complaint resolved, Unsatisfactory performance procedures commenced, Misconduct procedures commenced

The complaints resolution processes encompass both informal and formal action.

Upon receiving a complaint the manager will assess the nature of the complaint and form a view regarding the appropriate course of action. In exceptional circumstances, it is open to a manager to decline to accept a complaint where he or she is satisfied the complaint is clearly without merit, vexatious or malicious. In such a case, the manager should give the complainant his or her reasons in writing.

The manager will need to make an assessment in each case about whether the concern or complaint requires the use of a formal process or whether informal resolution is

appropriate. If the matter involves allegations of misconduct or sexual harassment the manager must contact the Conduct & Ethics Branch for advice.

*Many concerns expressed to the manager are most appropriately dealt with at an informal level.*

*Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance in the VPS Last updated 16 May 2011*

### **Informal process**

The principal or manager may decide to respond to a complaint through an informal process where:

- a complaint is of a minor nature
- the complainant wishes the matter dealt with informally and the principal or manager considers this appropriate in the circumstances
- a complaint has arisen from lack of, or unclear, communication.

Informal resolution of a complaint may involve talking to one or more of the parties. The complainant may wish to deal with the situation him or herself but may seek advice as to possible strategies to resolve the matter. The complainant may ask the manager, or another person, to speak to the employee on his or her behalf. The manager, or other person, may then privately convey the complainant's concerns, listen to the response of the employee and respond accordingly. Informal procedures emphasise resolution rather than determining the substance of a complaint and may include conciliation.

Documentation associated with an informal process could be a diary entry and/or retention of a copy of any response provided to the complainant. However, documentation should be sufficiently detailed to provide a record of the steps taken in the management of the complaint. Providing a written response to the complainant outlining the action taken is advisable. An informal process may be formalised at any point where the principal or manager considers it appropriate, particularly where an informal process has been unsuccessful or new information is received.

### **Mediation**

Prior to determining the course of action, and where the parties agree to participate, the manager may choose to use a mediation process where the nature of the complaint lends itself to being resolved by mediation. In some matters mediation may assist the parties to resolve the complaint. However, mediation is not always appropriate, particularly in complaints involving alleged inappropriate conduct or sexual harassment.

It is important not to expose the complainant to a repeat of the behaviour already complained about. The manager must ensure that the conduct of the participants in mediation is appropriate and professional at all times. Particularly in relation to complaints of sexual harassment or bullying, it is important that the complainant understands that mediation is not mandatory and the complainant is entitled to refuse to participate without any adverse consequence.

The object of mediation is to assist the parties to achieve resolution of the complaint. Whilst mediation is not mandatory, complaints may be settled where the parties are brought together to discuss the problem and seek solutions.

Any party involved in the mediation process may include another person for support and assistance. No party to the mediation process may be represented by another person acting for fee or reward. Where any of those involved may be disadvantaged, for example due to

disability or impairment or non-English speaking background, reasonable steps should be taken to mitigate the disadvantage including reasonable accommodation and access to interpreters.

The following principles will be applied in any mediation process:

- encouraging willingness in parties to acknowledge circumstances and develop solutions
- identifying and working from areas of common understanding
- identifying scenarios and alternative responses and behaviours
- offering counselling or other forms of welfare support
- ensuring an effective mechanism for communication where there is difficulty with interpersonal relationships.

Through mediation a resolution may be achieved which is mutually acceptable to the parties, for example:

- acknowledging each other's perspective and developing agreed strategies for managing differences
- offering an apology
- giving an undertaking that inappropriate behaviour will be changed
- clarifying expectations of appropriate conduct
- counselling.

The Department's Employee Assistance Program (EAP) may also assist with a mediation process. The EAP comprises two elements: *Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance in the VPS Last updated 16 May 2011 22*

1. A short-term solution focused confidential counselling service consisting of up to four sessions for any work related or personal issue for individuals.
2. A dedicated Manager Assist telephone advisory service to provide management advice and support to managers.

It is intended that the EAP will provide early and effective support to employees requiring assistance as well as supplement the other important support services provided by the Employee Health Unit (EHU). EAP is available for complainants, employees subject to complaints or disciplinary proceedings and other employees involved in a complaint or disciplinary proceeding.

The telephone contact number for employees and managers wishing to access the EAP is 1800 337 068. Managers wishing to enquire about the DEECD mediation service should contact the Employee Health Unit on 9637 2460.

#### **Informal complaints procedures involving allegations of sexual harassment**

Allegations of sexual harassment must be treated seriously and in most cases should be handled in accordance with the formal complaints process.

In certain limited circumstances, allegations of sexual harassment may be handled informally, for example:

- Where the complainant asks the manager, or other person to speak to the respondent on their behalf. This person should privately convey the complainant's concerns and reiterate the objectives of the Department's Sexual Harassment Policy to the

respondent without assessing the merits of the case (and without establishing if the complaint has substance).

- Where the complainant wants to deal with the matter him or herself but seek advice on possible strategies to resolve the matter (i.e. from the manager, sexual harassment contact or other person). In this situation, the complainant should be advised that the employer has an obligation to the whole workplace and may be required to take action regardless of the complainant's wishes.

Where a complainant wishes to handle the matter him or herself, and the manager considers this appropriate, this does not absolve the employer of its obligation to act. This obligation exists regardless of whether the procedure implemented is formal or informal.

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Last updated 16 May 2011

It is imperative that managers act as soon as they are alerted to the possibility that sexual harassment may be occurring in the workplace.

Sexual harassment can have serious ramifications for the whole of the workplace, not just for the harassed person. The employer has a duty of care to provide a safe workplace and must take responsibility for the work environment and culture.

#### **Supportive actions of manager in dealing with sexual harassment**

With regard to complaints of sexual harassment, whether or not the complainant wishes to deal with the matter himself or herself, and the manager considers this appropriate, the obligation on the employer to act in these circumstances may require the manager to:

- reiterate to the whole workplace that sexual harassment is unacceptable and will not be tolerated;
- promote the Department's Sexual Harassment Policy and the avenues for seeking advice and making complaints;
- monitor the whole workplace to ensure that acceptable standards of conduct are maintained in the workplace;
- ensure compliance as far as practicable with the items listed in the "Responsibilities" Sexual Harassment policy;
- ensure that the alleged harasser is aware of and understands the Sexual Harassment policy (this may involve speaking directly to the respondent about the allegations);
- take any other appropriate action.

It is advisable to provide to the complainant a written response outlining the action taken and the outcome. Documentation regarding the sexual harassment complaints should be sufficiently detailed to provide a record of the steps taken in the management of the complaint. Where an informal procedure is inappropriate, unsuccessful, or the complainant wishes to pursue the matter further, the manager will implement the formal procedure.

## **2. Broad Guidelines**

### **Formal process**

Matters raised directly with the manager or otherwise brought to the manager's attention may warrant the use of a formal process. The Conduct & Ethics Branch may be contacted for advice and support in the implementation of the formal process. *Guidelines for Managing*

*Complaints, Misconduct and Unsatisfactory Performance in the VPS Last updated 16 May 2011 24*

The formal complaints process comprises the following steps:

Step 1: investigating the complaint

Step 2: making a finding

Step 3: Determining appropriate actions

### **3. Implementation**

#### **Step 1: Investigating the complaint**

Commencement of a formal resolution process requires the manager to investigate the complaint to determine whether or not it has substance. An investigation will involve:

Establishing the precise nature of the complaint. This may involve making a written record of the verbal complaint, interviewing the complainant and requesting that the complaint be put in writing (where this has not already occurred). The failure of a complainant to put the complaint in writing does not mean the complaint should not be investigated. Where the complainant advises the manager they wish to remain anonymous, the manager needs to establish why the complainant does not want their identity disclosed. In this respect, the manager will need to manage the concerns of the complainant. In most cases, it is not possible for the complainant to remain anonymous due to the right of the respondent to natural justice and to know the allegation(s) being made against him or her. Whilst the complainant's wishes should be taken into account, they do not determine whether or how the complaint should be investigated. That is the responsibility of the manager.

Where a complaint has been received in writing, the manager should acknowledge receipt of the complaint in writing.

- Providing to the employee the details of the complaint in writing and providing the employee with an opportunity to provide a response in writing. It is preferable that the written details of the complaint be provided to the respondent in person. The letter of complaint should include information regarding who made the complaint and when it was received, the specific allegations, and advice to the employee regarding confidentiality.
- Providing the employee with an indicative timeline for the investigation. Where this timeline needs to be varied, the manager should advise the employee.
- *Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance in the VPS Last updated 16 May 2011 25*
- Considering other relevant matters to assist in clarifying the complaint. This may involve examining personnel records and other documentation, requesting a written statement from any witnesses or other persons and where necessary, interviewing those people.
- Keeping written accounts of all interviews.
- Providing the opportunity for the respondent to have a support person present during all meetings as part of this process (the role of the support person is defined in this document under the heading "Support Person").
- If the manager considers it necessary or appropriate in the circumstances, providing the opportunity for the employee to meet with the manager in person to clarify matters in the response.

- The investigation must be sufficiently thorough to allow the manager to arrive at a reasonable state of satisfaction that on the balance of probabilities the complaint is or is not substantiated. It is not necessary to interview every witness to an incident to arrive at a decision regarding substance.

*Note: Where an employee is invited to provide a written statement but does not do so, or chooses not to meet with the manager, this does not prevent the investigation of the complaint proceeding. Employees should be informed of the implications of not providing a response, for example, that the matter will progress without their version of events, as set out in a written response, being considered.*

*Note: where applicable the principal should give consideration to whether a student's parent needs to be advised of any interview conducted as part of an investigation into an employee's conduct or performance.*

### **Step 2: Making a finding**

Following the investigation, the manager should determine whether the complaint has substance and make a decision about what action, if any, should be taken. In addition to the information listed in Step 1, this assessment should take into consideration:

- Whether the weight and reliability of the evidence demonstrates that the complaint has or has not been substantiated.
- The circumstances and context of the complaint.
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- Whether evidence was presented by the parties and witnesses in a credible and consistent manner.
- The absence of evidence where it should logically exist.
- In making a decision, the manager should consider the evidence collected during the investigation. The manager should be satisfied, so far as is possible, of the facts of the situation and make a decision based on this assessment. The investigation must be sufficiently thorough to allow the manager to arrive at a reasonable state of satisfaction that, on the balance of probabilities, the complaint is or is not substantiated. For example, it is not necessary to interview every witness to an incident to arrive at a decision regarding substance.
- The standard of proof is a civil standard of the balance of probabilities – that, on the balance or probabilities, it is more likely than not, that the allegation occurred. The manager, as the investigator, does not have to be satisfied beyond reasonable doubt (which is the criminal burden of proof).

Where there are no independent witnesses to provide evidence, the manager may make a decision based on the credibility of the parties involved. Each case should be assessed on its own particular circumstances. 'Hearsay' evidence (that is, evidence provided by a person who did not witness the event or matter in question) may be relied upon, but may be given less weight than direct evidence.

### **Step 3: Determining appropriate actions**

Following the investigation the options available to the manager are to find the complaint substantiated or not substantiated.

#### ***Complaint not substantiated***

The manager may determine that a complaint does not have substance and dismiss it. In this case the manager should clarify any misunderstandings and deal with the issues. This may involve:

- Acknowledging different perspectives.
- Reminding those involved of expected standards of conduct.
- Monitoring the situation carefully.

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### ***Complaint substantiated***

Where the manager determines that a complaint does have substance the manager is to determine the appropriate course of action. In determining appropriate action, the manager may consider one or more of the following:

- the recommendation of suitable counselling, whether personal or performance based counselling
- undertakings that inappropriate behaviour will cease
- clarification of expectations of appropriate conduct
- setting up a support group
- issuing a warning in relation to the consequences of continued behaviour, and placing a copy on the employee's personal file, along with the other documentation
- implementing a formal period of monitoring
- provision of a mentor
- referral to professional development
- completing the Department's Online Workplace Discrimination or Workplace Bullying Course and Sexual Harassment Training Course, if this has not already occurred (or re-doing the course if appropriate)
- referring the employee to the Department's Employee Assistance Program
- implementing unsatisfactory performance procedures
- implementing the misconduct procedures
- other appropriate action

Where the complaint raises significant issues in relation to unsatisfactory performance, the manager should raise these issues in the employee's Performance and Development Plan and give consideration to implementing unsatisfactory performance procedures in accordance with the Guidelines. Similarly, if the conduct amounts to misconduct, consideration should be given to implementing the misconduct procedures.

A written response outlining the decision and the reasons for it should be provided to the employee. A written response should also be provided to the complainant informing them of the conclusion of the process. Where appropriate, and taking into account privacy considerations, the response should broadly outline the key findings. In some situations, it may not be appropriate to inform the complainant about the details of the action taken against the employee as that information is personal information between the employer and the employee.

### **4. Evaluation**

This policy will be reviewed for effectiveness when needed.

### **5. References**

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