Managing Unsatisfactory Performance -

Heads of Program, Heads of School, Assistant Principals and Deputy Principals

# Contents

**Overview 3**

**Statement of Intent 3**

**Performance Culture 4**

Developing Performance Framework 4

Performance Feedback 5

**MUP Process 5**

Stage One 7

Stage Two 8

Stage Three 9

Stage Four 10

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# **Managing Unsatisfactory Performance**

This procedural policy applies to employees engaged in a promotional position (other than Principals) under the *Teachers’ Award – State 2012*. More specifically, Heads of Program, Heads of School, Assistant Principals and Deputy Principals.

**Overview**

The objective of the Managing Unsatisfactory Performance (MUP) policy is to ensure employees are meeting or exceeding performance expectations.

This procedural policy provides a framework within which employees will have an opportunity to address concerns about unsatisfactory performance in such a way that:

* recognises the key role of employees in student achievement and student outcomes;
* acknowledges their key role in putting Education Queensland’s values into practice and in realising the vision of Education Queensland; and
* ensures efficiency, equity, dignity and confidentiality in dealing with a classroom teacher’s unsatisfactory performance; and
* acknowledges the potential for an ongoing contribution to quality classroom teaching only where teaching and learning practices in their classroom/s are not subject to the MUP process (i.e. unsatisfactory performance has been identified in the leadership/management functions of the employees role alone).

For the purpose of this procedure an ‘employee’ is defined as a person who is employed in a promotional position (other than Principals) under the *Teachers’ Award – State 2012*. More specifically, Heads of Program, Assistant Principals, Heads of School and Deputy Principals.

**Relevant legislation and policy**

* *Industrial Relations Act 1999* (Qld)
* *Public Service Act 2008* (Qld)
* *Public Service Regulation 2008* (Qld)
* *Teachers’ Award – State 2012*
* *Department of Education and Training Teachers’ Certified Agreement 2012*
* *Public Sector Ethics Act 1994* (Qld)

 **Substantive policy**

* Valuing Performance Policy
* Code of Conduct for the Queensland Public Service

Employees are responsible and accountable for:

* leading and managing officers;
* student achievement and student outcomes;
* their own performance;
* their own professional development through their positive engagement with the Developing Performance Framework;
* maintenance of relevant documentation; and
* compliance with relevant legislation.

Employee responsibilities and accountabilities may also include:

* effective and efficient teaching and learning practices in their classroom/s;
* school administration functions, including but not limited to curriculum development/delivery, behaviour management and human resource management;
* regularly monitoring the performance of officers under their supervision and providing appropriate feedback and, where necessary, assistance in a timely manner;
* managing the unsatisfactory performance of officers under their supervision in accordance with the relevant MUP policy when unsatisfactory performance is identified;
* leading successful change and development; and
* providing leadership in the school community.

This procedural policy provides processes and procedures for the identification and management of unsatisfactory performance of employees.

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**Performance Culture**

This procedural policy forms part of the Valuing Performance Policy Statement.

Prior to implementing a MUP process, it is assumed that the employee is aware of expectations of their performance and performance development as conveyed through:

* recruitment, selection and induction programs;
* the employee’s role description;
* the Developing Performance Framework; and
* performance feedback from the Principal with respect to their performance.

*Developing Performance Framework*

The Developing Performance Framework is separate from procedures for the management of unsatisfactory performance. It is assumed, however, that expectations of performance and performance development will form part of a written performance management tool, such as the Developing Performance Framework, between the employee and the Principal. The absence of such a written performance management tool does not preclude the application of this procedural policy in the event of an employee’s unsatisfactory performance.

The MUP process is not the appropriate process for identification and delivery of performance development needs – which remains the function of the Developing Performance Framework. Nevertheless previously agreed participation in, and scheduled attendance at, performance development opportunities identified through the Developing Performance Framework will continue throughout the MUP process. Resources and assistance rather than professional development opportunities will be made available to the employee through the MUP process.

*Performance feedback*

Unsatisfactory performance will be the subject of ongoing informal performance feedback between the employee and the Principal. The ongoing informal communication of performance expectations and performance concerns will enable emergent performance concerns to be identified and addressed as they arise.

This informal feedback will also assist the Principal in:

* identifying and clearly communicating performance concerns at the earliest opportunity;
* ascertaining any legitimate mitigating factors, including medical conditions and/or personal reasons, that may assist in explaining performance concerns and/or need to be taken into consideration in applying MUP processes; and
* informally developing and implementing strategies to address identified issues.

It is intended that issues that may lead to a formal MUP process will usually be identified informally in the first instance. Formal management of unsatisfactory performance processes will usually be applied in the event of unaddressed, ongoing and/or significant performance concerns.

**MUP Process**

MUP processes provide the Employee with an opportunity to address concerns about their performance.

Employees who refuse or fail to participate in the MUP process may be liable for disciplinary action under the *Public Service Act 2008*.

The employee is responsible for:

* actively participating in the process;
* responding to and addressing performance concerns;
* identifying resources and assistance in consultation with the Principal for the purpose of addressing performance concerns and meeting performance goals; and
* developing and implementing strategies to address identified issues.

The Principal is responsible and accountable for:

* clearly communicating performance concerns and performance goals;
* helping to identify resources and assistance in consultation with the employee for the purpose of the employee addressing performance concerns and meeting performance goals;
* monitoring the employee’s performance;
* notifying Payroll Services should an employee proceed to stage 2 of the MUP process and providing further notification when the process has been finalised;
* ensuring the employee is afforded natural justice throughout the MUP process; and
* advising the employee of their right to be accompanied by a support person.

The Principal is responsible for all final decisions and recommendations under stages 1 and 2 of the process. However, a Principal may choose to delegate their supervisory duties to another School Leader (e.g. Deputy Principal) who holds a position classified higher than that of the employee.

A reference to “Principal” within this document also includes a Principal’s delegate (excluding where the Principal is required to make a decision/recommendation).

While injury or illness may be a cause of, or contribute to, unsatisfactory performance, each matter should be assessed on a case by case basis to determine whether or not it is appropriate to be managed under the MUP process. In these instances, appropriate consultation with a trained workplace rehabilitation or organisational health officer should be undertaken.

It is not appropriate that the MUP process be implemented or continued where unsatisfactory performance is associated with a pre-existing illness or injury. When an employee accesses sick leave during a MUP process, that officer may be referred for an Independent Medical Examination where deemed appropriate. For further information, please contact the Organisational Health Unit.

Where any party directly involved in a MUP process submits during the course of a MUP process a formal complaint associated with the MUP process or against individuals involved in the MUP process, the employee’s Principal will notify the Regional Director or their delegate who will put in place appropriate arrangements for the MUP process to continue according to documented timelines, wherever possible, or with minimal delay in the process.

These arrangements may include but are not limited to:

* investigation and finalisation of the formal complaint within seven days; or
* assignment of responsibility for progressing the MUP process to a School Leader within the school (who previously has not been involved in the MUP process) or a School Leader from another school until such time as the formal grievance has been investigated and finalised, at which time responsibility will revert to the employee’s Principal.

Performance issues of a sufficiently serious and pressing nature or involving serious risk to student or staff health and safety should be dealt with under the *Public Service Act 2008*, the *Code of Conduct for the Queensland Public Service* and/or the Department of Education, Training and Employment *Standard of Practice*.

Employees will be advised of the intention to implement a formal MUP process and be provided with an opportunity to seek the advice and support of a union representative and/or colleague in all meetings during which matters pertaining to the MUP process are discussed.

Employees will be afforded the opportunity to respond to all performance concerns, including raising possible reasons for unsatisfactory performance.

The formal MUP process will be implemented as follows:

Stage 1 – Identification and Improvement Plan

*Concern*

The employee’s Principal and the employee (and their nominated support person if requested) will meet to discuss any ongoing performance concerns. The Principal and the employee will document ongoing performance concerns in a formal Identification and Improvement Plan. Performance concerns must be communicated – both verbally and in writing – clearly and with sufficient detail to afford the employee every reasonable opportunity to address the performance concern/s.

*Expectations*

Expectations of the employee’s performance will be recorded in the Identification and Improvement Plan. These expectations will be expressed as performance goals, the achievement of which will indicate satisfactory performance. Wherever possible, performance goals will be measurable to enable objective assessment of the employee’s performance.

*Resources*

The Identification and Improvement Plan will identify material and human resources and other forms of assistance available to the employee to assist them to achieve the prescribed performance goals. The Identification and Improvement Plan will indicate how, and if necessary when, these resources and assistance are able to be accessed.

*Timeframe*

A timeframe for improvement against each performance goal will be recorded on the Identification and Improvement Plan.

Stage 1 – Identification and Improvement Plan of the MUP process will take no more than five school days including the day on which the employee’s Principal notifies the employee either verbally or in writing that a formal MUP process is to be initiated. This stage may be extended beyond five days by mutual agreement between the employee’s Principal and the employee.

As part of Stage 1 – Identification and Improvement Plan, the Principal will advise the employee of the intended process consistent with this policy including MUP stages, timeframes and possible disciplinary outcomes. The employee should also be given a copy of this policy.

In documenting the Stage 1 – Identification and Improvement Plan process, the Principal may choose to use the provided forms or an equivalent.

Stage 2 – Improvement

The employee will be provided with four weeks (20 school days) to address performance concerns and meet performance goals as recorded in the Identification and Improvement Plan.

The employee’s performance will be progressively assessed by the Principal through:

* examination of the employee’s materials and work output; and
* observation of the employee’s classroom practice, where the role entails classroom teaching.

Where classroom teaching forms part of the employee’s role and classroom teaching performance concerns have been identified in the Identification and Improvement Plan, four to six lesson observations should be undertaken, each for a minimum of thirty minutes. In this instance, the employee will not receive prior notice of two of these observations.

It is essential that the employee receives progressive feedback on their performance and copies of documented assessments/observations. The employee must be given the opportunity to respond in writing to each assessment/observation and the employee’s written response should be attached to their supervisor’s record of the MUP process.

The Principal may terminate Stage 2 – Improvement at any time in the event that the supervisor determines that:

* the employee has addressed the performance concerns and met or exceeded the performance goals as recorded in the Identification and Improvement Plan so that the employee’s performance is now satisfactory; or
* on the basis of medical evidence, the Employee is not fit for duties and no other remedial action is available.

Where the Principal terminates Stage 2 – Improvement because the employee’s performance meets or exceeds documented performance goals, no further remedial action will be taken and the MUP process will cease. However, the Principal may revisit the MUP process and re-apply the Identification and Improvement Plan to the extent that the same performance concerns are identified within a 12-month period after the MUP process ceases. The duration of Stage 2 – Improvement will not extend beyond eight teaching weeks for any employee, including for part-time employees.

On completion of Stage 2 – Improvement, the Principal must assess whether the employee’s performance is satisfactory or unsatisfactory. If unsatisfactory, the Principal must refer the employee’s performance to the relevant Regional Director or their delegate, recommending that the process be continued to Stage 3 – External Review. A copy of this recommendation and MUP process documentation should immediately be provided to the employee, who may choose to make a separate submission to the relevant Regional Director.

NB: Employees who are subject to a Managing Unsatisfactory Performance (Stage 2 or beyond) process at the time of their annual increment will not be entitled to progress to the higher increment under the *Department of Education, Training and Employment State School Teachers’ Certified Agreement 2012.*

The employee will become eligible to progress to a higher increment only when their performance has been assessed as satisfactory. Future increments will occur annually from the date that their performance has been assessed as satisfactory.

Stage 3 – External Review

In deciding whether or not to implement an external review of the employee’s performance, the Regional Director or their delegate will review the MUP process to date to ensure its compliance with this policy and that the employee has been provided with reasonable opportunities to formally respond through the MUP process.

The Regional Director or their delegate will inform the employee in writing that the MUP process will now proceed to Stage 3 – External Review and provide information on the process and the names of the two external officers' who will conduct the Stage 3 review. The external officers will initially meet with the employee and explain the proposed review process.

The external officers will (wherever possible) be two officers classified in the School Leader stream of the *Department of Education and Training Teachers’ Certified Agreement 2012.* Both officers should hold positions classified higher than that of the employee. Where some or all of the performance concerns relate to classroom teaching, one of the external officers should (wherever possible) have recent experience either teaching or supervising classroom teaching similar to that of the employee. Where the performance concerns relate only to leadership, management and/or administration, the two external officers should be two Principals from other schools whose positions are classified at or above that of the employee’s Principal.

Where concerns relate to classroom teaching the external officers will observe four to six lesson observations, for a minimum of thirty minutes each, within one week (5 days) where possible and no more than two weeks (10 days).

Half of the observations (i.e. either two or three teaching periods) may be undertaken without the employee receiving prior notice. The external officers should assess only the classroom teaching component of the employee’s competency and provide the employee with progressive feedback. The assessment document should be discussed with, and signed by, the employee.

If ongoing performance concerns relate to leadership, management and/or administration and the recommendation that the MUP process continue to Stage 3 – External Review is accepted, the Regional Director or their delegate will nominate two Principals from other schools (of an enrolment-related band no less than the school at which the employee is engaged) to further assess the employee’s performance.

The external officers will assess the employee’s performance through an examination of the employee’s materials and work output giving consideration, as appropriate, to the seniority of the role within the school, to:

* any demonstrated improvement in performance during the MUP process;
* performance considerations subject to the employee’s MUP process;
* the record of the MUP process, including its adherence to principles of natural justice;
* whether or not the employee may benefit from additional time to demonstrate improvement; and
* any complaint submitted by the employee with respect to the MUP process.

The external officer must prepare a comprehensive report on the employee’s performance and suitability for continued employment, recommending an appropriate outcome of the MUP process. The external officers’ report must be provided to the employee, employee’s Principal and the Regional Director.

The Regional Director will consider the Stage 3 – External Review report, and may:

* dismiss the matter providing reasons for doing so to the employee and employee’s Principal; or
* submit to the Board of Review a letter recommending that the Board of Review consider a particular form of disciplinary action, including termination of employment, pursuant to Section 187 of the Public Service Act 2008 and attaching a summary of the MUP process and relevant documentation; or
* take any other appropriate action.

Where the Regional Director dismisses the matter providing reasons for doing so, no further remedial action will be taken and the MUP process will cease. However, the employee’s Principal in consultation with the Regional Director or their delegate, may revisit the MUP process and re-apply the Identification and Improvement Plan to the extent that the same performance concerns are identified within a 12-month period after the MUP process ceases.

Stage 4 – Board of Review

The Board of Review will meet, as required, to:

* consider the employee’s performance;
* ensure that the MUP process has been fair and observed tenets of natural justice; and
* consider whether to accept the Regional Director’s recommendation of disciplinary action pursuant to section 187 of the Public Service Act 2008.

The Board of Review will examine all submissions and independently recommend appropriate administrative action to the Assistant Director-General, Human Resources, who will then determine the final administrative action to be taken.

Termination of employment shall only be a disciplinary outcome where unsatisfactory performance has been found with respect to classroom teaching performance.

When the employment of an employee is terminated for unsatisfactory performance following a MUP process, a Notice of Further Consideration Required will be placed against the employee’s employment record. Any future applications for employment with the Department of Education, Training and Employment will be referred directly to the Executive Director, Workforce Management and Support for consideration.

The Board of Review assists in minimising possible industrial conflict associated with performance-related matters, and helps ensure that allegations of unfair practices do not undermine performance management processes.

The Board of Review will consist of:

* the Executive Director, Workforce Management and Support;
* a State School Principal;
* a State High School Principal; and
* a representative of the Queensland Teachers’ Union.

Where disciplinary action is proposed pursuant to the *Public Service Act 2008*, the employee will be given at least 14 days to respond to all matters of concern before a determination is made.

All responses will be fully considered by the Board of Review prior to recommending final administrative action for approval by the Assistant Director-General, Human Resources.

Immediately after the Assistant Director-General, Human Resources determines the final administrative action on an unsatisfactory performance report, the Principal and Regional Director will receive a copy of the determination.

**Policy Review**

The Department of Education, Training and Employment and the Queensland Teachers’ Union commit to review this MUP policy after 12 months of the policy’s operation.