

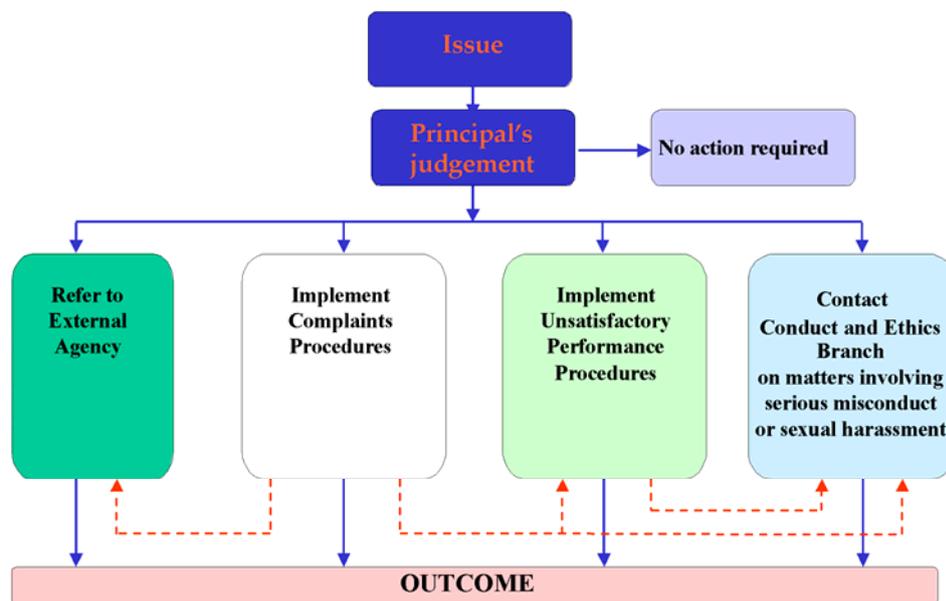
6.10 Complaints, unsatisfactory performance and serious misconduct

The Department of Education and Training has a responsibility to ensure that high standards of conduct and performance are maintained by staff. It is incumbent on the principal/designated officer to act where a complaint, unsatisfactory performance or misconduct involving a staff member is observed or brought to his or her attention, whether or not a formal complaint has been lodged.

A designated officer will manage the procedures in respect of principals and assistant principals. For principals, regional principal consultants/senior education officers and liaison principals, the designated officer will be the Director, Office of School Education's nominee. For assistant principals the designated officer will be the principal.

With respect to implementing these procedures in relation to a school services officer, the employer is either the Secretary or the school council. The principal will manage the procedures on behalf of the employer.

The principal/designated officer will need to make an assessment on the appropriate course of action to resolve the matter as illustrated below.



In determining the appropriate action, the principal/designated officer, subject to satisfying any legal or policy requirements, should use his or her professional judgement to decide whether the matter should be dealt with as a complaint, unsatisfactory performance or serious misconduct. The Department's Conduct and Ethics Branch is available to provide advice and assistance on these matters.

Where the matter involves alleged serious misconduct or sexual harassment the Conduct and Ethics Branch must be contacted for advice regarding the appropriate course of action.

Where a complaint relates to alleged improper conduct by school staff the complaint may be more appropriately dealt with as a protected disclosure under the *Whistleblowers Protection Act 2001*.

Information about making a protected disclosure is provided in the *Whistleblowers Protection Act 2001 - Department of Education & Training Guidelines* available on EduWeb at :

<http://www.eduweb.vic.gov.au/hrweb/workm/other/whistle.htm>

Information is also available from the [Ombudsman](#).

The procedures for the management of complaints, unsatisfactory performance and serious misconduct are set out below.

6.10.1 Complaints against staff

Complaints against a staff member may arise from:

- allegations of unlawful discrimination
- allegations of unlawful harassment, including sexual harassment
- unprofessional conduct and/or unsatisfactory performance
- a school practice or policy that the complainant believes is unfair, unreasonable or inappropriate
- decisions made, or not made, that the complainant believes are unfair, unreasonable or inappropriate
- a particular incident.

The principal/designated officer must ensure that a complaint is dealt with in a way that is both procedurally and substantively fair.

Principles of natural justice that must be observed in managing the resolution of a complaint are:

- the right of each party to be heard
- the right of each party to be treated fairly
- the right of the staff member to know the allegation(s) being made against him or her
- the right of the staff member to have a support person present, who may be a union representative, when he or she is informed of the complaint and at any subsequent meetings
- the right of the staff member to respond to the allegation(s) made against him or her
- the right of each party to a decision-maker who acts fairly and in good faith.

The implementation of the complaints resolution procedures for staff should:

- ensure procedural and substantive fairness
- reinforce that the Department will treat all complaints seriously

- ensure that all complaints are dealt with in a fair and consistent manner
- highlight occurrences of unacceptable and inappropriate behaviour and the need for preventative strategies in particular areas
- meet the Department's legal obligation to take all 'reasonable precautions' to prevent discrimination and harassment occurring
- reduce the risk of the school, the principal/designated officer or the school council being held vicariously liable for the actions of individuals that contravene anti-discrimination legislation
- prevent the unnecessary escalation of the situation.

It is important that all steps in the complaints procedure are documented.

At any stage, a complainant has the right to take their complaint directly to an external agency, such as the Victorian Equal Opportunity Commission, the Human Rights and Equal Opportunity Commission, or the Ombudsman.

In addition to these procedures the following documents, available on EduWeb at:

<http://www.eduweb.vic.gov.au/hrweb/workm/perform/comagst.htm>

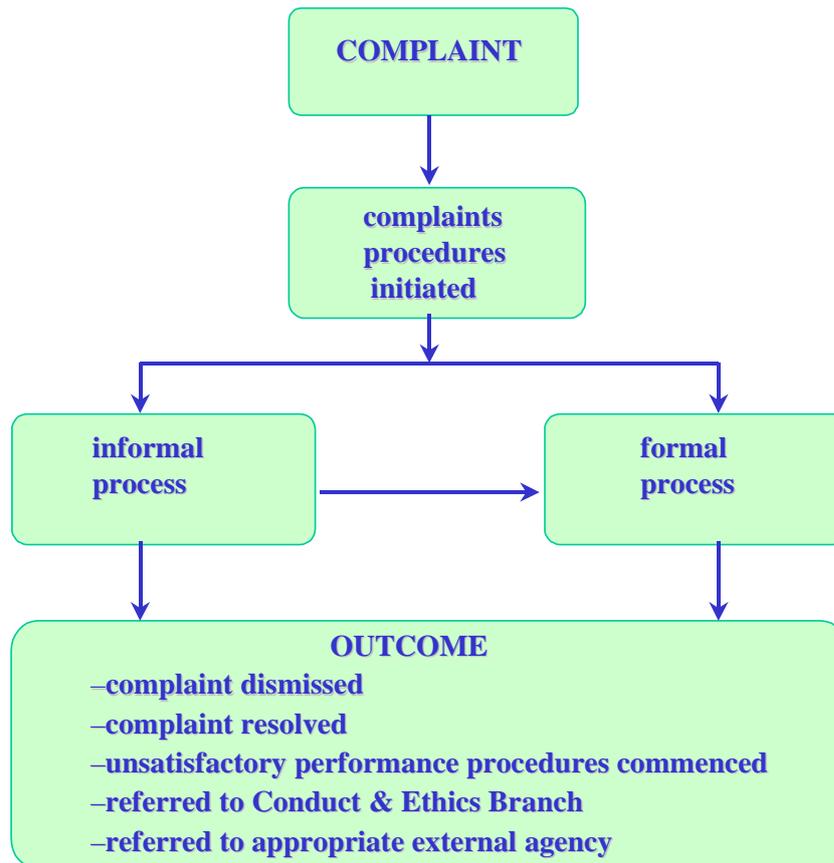
are relevant in the management and resolution of complaints:

- Department of Education and Training merit and equity policies
- Department of Education and Training policies and procedures on sexual harassment.

The principal/designated officer can provide advice regarding the lodging of a complaint. It may also be necessary for the principal/designated officer to allocate responsibility to a suitably trained member of staff for providing advice and support for complaints involving matters such as discrimination, sexual or racial harassment or victimisation.

6.10.1.1 Complaints resolution procedures

The complaints resolution procedures provide a framework for the resolution of complaints made against a staff member. The principal/designated officer should inform complainants of options for dealing with complaints and their right to seek resolution using bodies external to the Department. Complaints made against a staff member should be dealt with promptly using the complaints resolution procedures as illustrated below.



The complaints resolution procedures encompass both informal and formal action.

Upon receiving a complaint the principal/designated officer will assess the nature of the complaint and form a view regarding the appropriate course of action.

Many concerns expressed to the principal/designated officer by parents, students, staff members or members of the community are most appropriately dealt with at an informal level. The principal/designated officer 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.

6.10.1.2 Informal process

The principal/designated officer 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/designated officer 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 himself or herself but may seek advice as to possible strategies to resolve the

matter. The complainant may ask the principal/designated officer, or another person, to speak to the staff member on his or her behalf. The principal/designated officer, or other person, may then privately convey the complainant's concerns, listen to the response of the staff member and respond accordingly. Informal procedures emphasise resolution rather than factual proof of a complaint.

Providing a written response to the complainant outlining the action taken is advisable. Documentation of an informal process can be minimal, for example a diary entry and/or retention of a copy of any response provided to the complainant. Where an informal process is either unsuccessful and the complainant wishes to pursue the matter, or the informal process is inappropriate the principal/designated officer will implement a formal process.

6.10.1.3 Formal process

The formal process comprises the following steps:

- Step 1 Investigating the complaint
- Step 2 Making a finding
- Step 3 Determining appropriate action
- Step 4 Preparing a report
- Step 5 Monitoring the situation.

Step 1 Investigating the complaint

Commencement of a formal complaints resolution procedure requires the principal/designated officer to investigate the complaint to determine whether or not it has substance.

An investigation will involve:

- establishing the precise nature of the complaint. This would normally involve interviewing the complainant and requesting that the complaint be put in writing (where this has not already been provided)
- informing the staff member in writing of the full details of the complaint and providing the opportunity for the staff member to respond in writing and, where necessary, interviewing the staff member
- 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
- allowing each party to have a support person, who may be a union representative, to accompany them to any interview or meeting.

Note: Where a person is invited to provide a written statement but declines to do so, this does not prevent the investigation of the complaint proceeding.

Step 2: Making a finding

Following the investigation, the principal/designated officer should determine whether the complaint has any 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:

- the circumstances and context of the complaint
- whether evidence was presented by the parties in a credible and consistent manner
- the absence of evidence where it should logically exist.

In making a decision, the principal/designated officer should consider all available evidence. The principal/designated officer should be satisfied so far as is possible, of the facts of the situation and make a decision based on this assessment. Where there are no independent witnesses to provide evidence, the principal/designated officer may make a decision based on the credibility of the parties involved. Each case should be assessed on its own particular circumstances.

Step 3: Determining appropriate action

In determining the appropriate course of action the options available to the principal/designated officer are to:

- dismiss the complaint.
- accept the complaint.

Dismiss the complaint

The principal/designated officer may determine that a complaint does not have substance and dismiss it. In this case the principal/designated officer 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.

Accept the complaint

Where the principal/designated officer determines that a complaint does have substance, the principal/designated officer is to determine the appropriate course of action.

Where the complaint involves misconduct or sexual harassment the principal/designated officer must contact the Department's Conduct and Ethics Branch for advice regarding the appropriate course of action.

Where the complaint raises significant issues in relation to unsatisfactory performance, the principal/designated officer should implement managing unsatisfactory performance procedures.

In determining the appropriate action the principal/designated officer may consider one or more of the following:

- formal apology
- 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 of the warning on the staff member's personal file
- implementing a formal period of monitoring
- referring the complainant to the appropriate external authority, and continuing to monitor the situation and providing appropriate support at the local level.

A written response outlining the decision and the reasons for it should be provided to both the complainant and the staff member.

Conciliation

Prior to determining the course of action, and where the parties agree to participate, the principal/designated officer may choose to use a conciliation process, where the principal/designated officer considers it appropriate and it may assist in achieving a resolution of the complaint.

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

Any party involved in the conciliation process may include another person for support and assistance. No party to the conciliation 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, steps should be taken to mitigate the disadvantage, including reasonable accommodation and access to interpreters.

The following principles will be applied in any conciliation 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 conciliation a resolution may be achieved that 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
- setting up a support group
- setting up mentor support
- counselling.

Step 4: Preparing a report

As soon as possible after making and acting on a decision, the principal/designated officer should document the complaint resolution procedure undertaken, including timelines, the principal/designated officer's decision and the outcome, including the outcome of any conciliation process, and include any other relevant documents such as:

- a written statement from the complainant(s) setting out the complaint(s)
- a written response from the staff member regarding the complaint(s), if this has been provided
- written witness statements
- documentation of any assistance provided to the complainant and/or staff member.

Step 5: Monitoring the situation

Following the resolution of a complaint the principal/designated officer will monitor the outcome of the complaint resolution procedure to ensure, as far as practicable, that the situation does not recur.

Documentation

Documents relating to a complaint should be placed by the principal/designated officer in a sealed envelope marked 'authorised access only' and filed on the staff member's personal file. Generally the principal/designated officer or other persons authorised by the employer in the case of school services officers, or the Director, Office of School Education, for members of the Teaching Service, would only access these documents as they may contain information that could be considered to be about the personal affairs of people involved in a complaints process and are subject to strict privacy provisions. Principals/designated officers are responsible for ensuring that all documents are handled with absolute confidentiality.

Confidentiality

The principal/designated officer must ensure that confidentiality is properly observed in relation to the management of a complaint. Proper steps should be taken at each stage of the procedure to secure complaints documentation, and all persons involved in the complaints procedure should be advised of the importance of maintaining confidentiality. The use of email or facsimiles as part of this procedure may require particular arrangements to be put in place to ensure confidentiality is not breached.

Allegations of harassment and discrimination carry the risk of defamation especially if confidentiality has not been maintained properly. Defamation may occur when a person's reputation is lowered in the estimation of his or her peers. Direct statement, imputation, pictures or jokes are some of the ways in which defamation may be said to have occurred.

It is not defamatory for an individual to make a complaint in good faith through the proper channels. However, the complaint should only be discussed with those who have official responsibility for dealing with it. A claim that defamation has occurred may be defended on the basis that the alleged defamatory statement was made without malice and only to a person with a proper duty to receive such a statement.

Protection from victimisation

It is unlawful to victimise another person. Victimisation occurs when a person is subjected to or threatened with any detriment for his or her involvement, whatever that may be, in a complaints process.

The principal/designated officer needs to be aware that victimisation of one or more of the parties involved in a complaints process can occur. Reasonable precautions need to be taken to prevent this happening. The complaints procedures should be designed as far as possible to prevent victimisation from occurring. However, in implementing these procedures, it should be made clear to the parties that victimisation is not tolerated and will be dealt with accordingly.

Victimisation should not be confused with the natural consequences of a properly applied complaints procedure. A person who claims the application of these procedures to be victimisation should be counselled about due process.

Vexatious complaints

Some complaints may be determined to be vexatious or malicious in nature. Where the principal/designated officer determines that this is the case, the complaint should be dismissed and the complainant counselled about his or her action in lodging a complaint.

6.10.2 Unsatisfactory performance

Where the principal/designated officer considers a staff member's performance to be unsatisfactory the following procedures may be applied. **These procedures are not intended to be used for the management of cases of serious misconduct.**

For the purposes of these procedures 'unsatisfactory performance' means:

- the failure of a staff member to efficiently or satisfactorily discharge his or her duties, or
- conduct or behaviour that contravenes the requirements of Teaching Service (Conduct and Duties) Order 1998 (Order No. 165) in the case of a member of the Teaching Service, or conduct or behaviour as set out in the School-based Non-teaching Service (Employment Conditions, Salaries and Allowances) Order No. 141 or its successor in the case of school services officers, or
- other conduct or behaviour which, in the opinion of the principal/designated officer, is unacceptable.

Such conduct, either by itself, or in conjunction with demonstrated failure in undertaking the duties of the position satisfactorily or efficiently, may indicate that appropriate action should be considered.

The standards of performance and conduct of members of the Teaching Service are set out in a number of ways, including:

- Teaching Service Order No. 165
- the professional standards for staff
- the school charter codes of practice/conduct

- federal and state equal opportunity and anti-discrimination legislation.

The standards of performance and conduct of school services officers are set out in a number of ways, including:

- any code of conduct applying to the public sector
- the performance standards for school services officers
- the individual's position description
- the school charter codes of practice/conduct
- federal and state equal opportunity and anti-discrimination legislation.

Consistent with the intention of the *Workplace Relations Act 1996* the procedures set out below have been developed to ensure that the principle of a 'fair go all round' is accorded to all parties. That is, the principles of procedural and substantive fairness underpin any investigation into either a staff member's performance or conduct.

The notion of procedural fairness has evolved through decisions of industrial tribunals and is a development of general principles of natural justice that require, among other things, that a person has a right to be heard before a decision is made, and that the decision is made without bias.

Consideration of a staff member's performance must also be substantively fair. This means that, where a report on the staff member's performance is made to the employer, the principal/designated officer:

- has acted in good faith
- can support the belief that the staff member's performance is unsatisfactory or that the staff member has behaved in an unacceptable way
- has provided opportunity and support to assist the staff member to reach the required standard of performance
- has determined that, despite support provided, the staff member is unlikely to reach the required standard of performance.

The unsatisfactory performance procedures have been designed to ensure both procedural and substantive fairness through a series of steps that provide for:

- advice to the staff member in relation to his or her unsatisfactory performance
- opportunity for the staff member to have a support person, who may be a union representative, to accompany them to any interview or meeting in relation to his or her unsatisfactory performance
- opportunity for the staff member to respond
- a period of monitoring and support
- issuing of formal warnings

determination of appropriate action.

The purpose of these procedures is to improve the staff member's performance to the required standards.

In implementing unsatisfactory performance procedures it is important that the principal/designated officer:

- encourages open communication at all times with the staff member
- defines and adheres to time limits
- documents all actions and procedures
- maintains confidentiality
- ensures procedural and substantive fairness.

Where a staff member fails to meet the required standard of performance it is important to determine the reasons for the unsatisfactory performance. Organisational and personal factors can have a significant influence on the quality of an individual's performance. Organisational factors that may affect performance could include such things as internal structure and arrangements, clarity of work expectations, access to training and development, the quality of the working environment, and procedures for providing feedback.

Issues of a personal nature, such as health, personal relationships and career identity can also affect performance. Sensitivity will need to be exercised in recognising and dealing with factors such as these.

In cases where the principal/designated officer considers that organisational or personal factors play a significant role in the staff member's unsatisfactory performance, action other than the implementation of unsatisfactory performance procedures may be more appropriate and effective in addressing the problem. However, this does not prevent the application of these procedures where the principal/designated officer considers this to be the appropriate course of action.

The assessment of the staff member must be made against the standards of work performance and conduct expected of that person at their level in the school. It is important that a staff member be given opportunity and appropriate support to improve his or her performance.

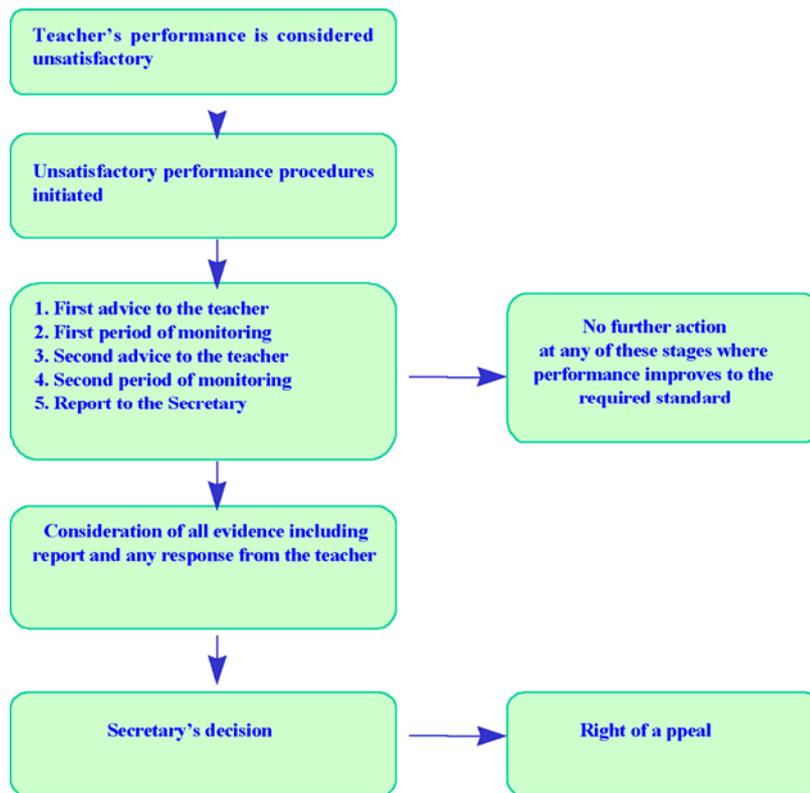
Procedures relating to incremental progression would normally be suspended while these procedures are being implemented.

6.10.2.1 Unsatisfactory performance procedures

The unsatisfactory performance procedures can be implemented at any time when a principal/designated officer considers that a staff member's performance is unsatisfactory. A principal/designated officer should deal with a staff member's unsatisfactory performance as soon as this comes to his or her attention.

If, during the implementation of these procedures, the principal/designated officer is satisfied that the performance of the staff member has improved to the required standard the principal/designated officer should inform the staff member that no further action in this process will be taken, provided that the staff member's performance continues to be at or above the required standard. If the staff member does not maintain the required standard of performance the principal/designated officer may continue the implementation of these procedures.

The unsatisfactory performance procedures are illustrated below.



Step 1: First advice to staff member

Where a principal/designated officer considers that a staff member's performance is unsatisfactory, the principal/designated officer should advise the staff member in writing:

- that his or her performance is unsatisfactory
- of the areas of unsatisfactory performance
- of the required standard of performance
- of the consequences of continued failure to meet the required standard of performance (as set out on below under the heading 'Secretary's/employer's decision')
- that he or she has three working days (or such longer period as the principal/designated officer considers reasonable in the circumstances) to explain any reasons for unsatisfactory performance
- that he or she may have a support person, who may be a union representative, to accompany them to discussions relating to the unsatisfactory performance.

The principal/designated officer must provide the opportunity for the staff member to meet and discuss this advice.

After consideration of the staff member's response or failure to respond within the period set by the principal/designated officer, the principal/designated officer should notify the staff member in writing that:

- no further action will be taken, or
- an opportunity will be provided (being not less than ten working days) for the staff member to improve his or her performance to the

required standard, including the way in which performance will be monitored.

Step 2: First period of monitoring

Where the principal/designated officer has informed the staff member that an opportunity will be provided for the staff member to improve his or her performance to the required standard, a period of monitoring must be set. Depending on the circumstances, the monitoring period would be between two weeks and three months. In determining the length of the monitoring period the principal/designated officer will need to consider the time reasonably required to improve performance in the identified area(s). This period must be at least ten working days.

During the monitoring period the staff member's performance will be monitored regularly, including providing feedback and opportunities to discuss progress. To assist the staff member to improve his or her performance during the monitoring period support should be offered, where appropriate, such as:

- providing formal and/or on-the-job training. Formal training programs may assist the staff member to develop his or her skills and knowledge to a higher standard
- providing a mentor to assist the staff member to develop skills and knowledge to reach the required standard of performance
- providing appropriate counselling
- ensuring an effective mechanism for communication where there is difficulty with interpersonal relationships.

Support should be tailored to the specific needs of the individual, but is provided in an overall context that recognises that individuals are ultimately responsible for their own performance.

The principal/designated officer should ensure that accurate records of the monitoring period are kept. These records will be important during any subsequent appeal proceedings.

At the completion of the monitoring period the principal/designated officer must assess the performance of the staff member. If the performance of the staff member is at or above the required standard, the principal/designated officer should inform the staff member in writing that no further action will be taken provided that the staff member's performance continues to be at or above the required standard.

Step 3: Second advice to staff member

If, after the first monitoring period the performance of the staff member continues to be below the required standard, the principal/designated officer should advise the staff member in writing:

- that his or her performance continues to be unsatisfactory
- the areas of performance that continue to be below the required standard
- the required standard of performance
- the consequences of continued failure to meet the required standard (as set out below under the heading 'Secretary's/employer's decision'), and

- that he or she has three working days (or such longer period as the principal/designated officer considers reasonable in the circumstances) to explain any reasons for the continued unsatisfactory performance.

The principal/designated officer must provide the opportunity for the staff member to meet and discuss this advice.

After consideration of the staff member's response or failure to respond within the period set by the principal/designated officer, the principal/designated officer should notify the staff member in writing that no further action will be taken or, that a further opportunity will be provided (being not less than ten working days) for the staff member to improve his or her performance to the required standard.

Step 4: Second period of monitoring

Where the principal/designated officer has informed the staff member that a further opportunity will be provided for the staff member to improve his or her performance to the required standard a second period of monitoring must be set. In determining the length of the second monitoring period the principal/designated officer will need to consider the time reasonably required to improve performance in the identified area(s) having regard to the time already provided in the first monitoring period. The second monitoring period must be not less than ten working days.

During the monitoring period the staff member's performance will be monitored regularly, including providing feedback and opportunities to discuss progress. To assist the staff member to improve his or her performance during the second monitoring period it may be appropriate to provide support.

The principal/designated officer should ensure that accurate records of the monitoring period are kept. These records will be important during any subsequent appeal proceedings.

At the completion of the monitoring period the principal/designated officer must assess the performance of the staff member. If the performance of the staff member is at or above the required standard, the principal/designated officer should inform the staff member in writing that no further action will be taken provided that the staff member's performance continues to be at or above the required standard.

Step 5: Report

If the performance of the staff member continues to be below the required standard at the end of the second monitoring period, the principal/designated officer must provide a report to the Secretary that includes:

- a written statement setting out details of the staff member's unsatisfactory performance
- a chronological outline of procedures followed
- details of any assistance and support provided to the staff member, including any training recommended, and whether the training was undertaken

- any other relevant details relating to the staff member's unsatisfactory performance
- a recommendation that action be taken by the employer under the *Teaching Service Act 1981* in the case of a member of the Teaching Service, or the relevant Ministerial Order in the case of a school services officer.

The report should also include any relevant documentation as attachments. Such attachments might include notes of any meetings in relation to the staff member's unsatisfactory performance.

Where a report is provided to the Secretary/employer, the staff member must be informed in writing that:

- his or her performance continues to be below the required standard
- a report recommending action in relation to his or her unsatisfactory performance has been provided to the Secretary/employer, a copy of which is attached to this notification
- a written response to the report, and raising any other matters in relation to the action which may be taken by the Secretary/employer, may be provided directly to the Secretary/employer within seven days of receiving the report.

Documentation

Documents relating to unsatisfactory performance procedures should be placed by the principal/designated officer in a sealed envelope marked 'authorised access only' and filed on the staff member's personal file. Generally the principal/designated officer or other persons authorised by the Director, Office of School Education/employer would only access these documents as they contain information that is required to be handled with absolute confidentiality.

Sample pro formas to assist in the implementation of these procedures are available on EduWeb at

<http://www.eduweb.vic.gov.au/hrweb/workm/perform/unsatis.htm>

Secretary's/employer's decision

On receipt of a report in relation to the unsatisfactory performance of a staff member, the Secretary/employer will consider the report made by the principal/designated officer and any response provided by the staff member.

After consideration of the report and any response by the staff member, the Secretary/employer will make a determination as to what action, if any, will be taken under sections 9 (teachers only) or 45 or Part V of the *Teaching Service Act 1981* with respect to a member of the Teaching Service, or under the relevant Ministerial Order with respect to a school services officer. The options available to the Secretary/employer include:

- taking no further action
- deferring his or her decision pending a further period of monitoring
- counselling the staff member

- taking action under section 9 (teachers only) or 45 or Part V of the *Teaching Service Act 1981* with respect to a member of the Teaching Service
- dismissal with respect to a school services officer.

Following the Secretary's/employer's determination the principal/designated officer and the staff member will be advised in writing of the decision and the action, if any, to be taken.

Where the Secretary determines that action in relation to the unsatisfactory performance of an ongoing member of the Teaching Service (other than a teacher employed under section 9 of the *Teaching Service Act 1981*) is appropriate under section 45 of the *Teaching Service Act 1981*, the Secretary may:

- reduce the member to a lower class or grade
- transfer the member to another office
- approve of the member retiring on the ground of ill health
- call upon the member to retire from the Teaching Service within a time to be specified
- dispense with the services of the member.

Where the Secretary determines that action in relation to the unsatisfactory performance of a temporary teacher under section 9 of the *Teaching Service Act 1981* is appropriate, the teacher can be dismissed.

Where the Secretary determines that action in respect of serious misconduct under section 9 or Part V of the *Teaching Service Act 1981* is appropriate, the procedures in respect of serious misconduct apply.

6.10.3 Serious misconduct

In a case of serious misconduct involving a staff member, the Department's Conduct and Ethics Branch must be contacted to assess the nature and seriousness of the alleged misconduct, and provide advice on the most appropriate course of action to pursue, including whether the staff member should remain on duty pending the outcome of an investigation.

Serious misconduct is most likely to relate to, but is not limited to, allegations of:

- sexual offences
- criminal charges
- other serious incidents, including:
 - harassment of other staff members, students or the public
 - serious negligence
 - behaviour that endangers others
 - striking a student, other employee or member of the public, or otherwise inflicting pain
 - refusal to obey a lawful instruction
 - alcohol or drug misuse
- contravention of any provision of an Act or the regulations, or
- committing any act of misconduct, or

- conducting oneself in a disgraceful, improper or unbecoming manner in an official capacity or otherwise, or
- failure to fulfil duties.

Serious misconduct of a member of the Teaching Service may be dealt with under section 9 (teachers only) or section 45 or Part V of the *Teaching Service Act 1981* and under the relevant Ministerial Order for school services officers. The nature and severity of the alleged misconduct will determine the steps to be taken in dealing with the staff member.

Where a complaint relates to alleged improper or corrupt conduct by school staff the complaint may be more appropriately dealt with as a protected disclosure under the *Whistleblowers Protection Act 2001*.

Information about making a protected disclosure is provided in the *Whistleblowers Protection Act 2001 - Department of Education & Training Guidelines* available on EduWeb at:

<http://www.eduweb.vic.gov.au/hrweb/workm/other/whistle.htm>

Information is also available from the [Ombudsman](#).

A sexual offence or sexual harassment can include inappropriate touching of students, staff members or members of the public and inappropriate verbal comments. Allegations of sexual harassment may constitute a criminal offence. Alleged sexual offences against children and young persons may have mandatory reporting implications and, where this is the case, the Department of Human Services must be contacted.

Where a staff member is the subject of criminal charge(s) the Department of Education and Training has a responsibility to investigate an allegation even when the police are involved, and to determine appropriate action in terms of the staff member's employment. In these cases close liaison with the Conduct and Ethics Branch and the police is necessary to ensure that the police investigation is not compromised in any way.

The Conduct and Ethics Branch is the Department's main liaison point with the Victoria Police.

Outcomes: Teaching Service

A teacher employed under section 9 of the *Teaching Service Act 1981* on a fixed-term or temporary basis who is the subject of proven allegations of serious misconduct may be dismissed by the Secretary (or delegate).

Under section 45 of the *Teaching Service Act 1981* where the Secretary (or delegate) is satisfied that an ongoing member of the Teaching Service, other than a member of the Teaching Service employed under section 9 of the *Teaching Service Act 1981*, is unable or unfit to discharge or incapable of efficiently discharging their duties, is not discharging their duties efficiently or satisfactorily, is not qualified temperamentally or otherwise for the efficient and satisfactory performance of their duties or is inefficient in the prompt and effective discharge of their duties, the Secretary (or delegate) may:

- reduce the member of the Teaching Service to a lower class or grade
- transfer the member of the Teaching Service to another office
- approve of the member of the Teaching Service retiring on the ground of ill health
- call upon the member of the Teaching Service to retire from the Teaching Service within a time to be specified
- dispense with the services of the member of the Teaching Service.

An ongoing member of the Teaching Service, other than a teacher employed under section 9 of the *Teaching Service Act 1981*, who is guilty of an offence under Part V of the *Teaching Service Act 1981* may have one or more of the following penalties imposed:

- a reprimand
- a fine not exceeding \$2000
- reduction in classification or grade
- removal from office and appointment to another office
- dismissal.

Outcomes: school services officers

The employer may dismiss a school services officer who is the subject of proven allegations of serious misconduct.

6.10.4 Removal from duties

If at any time the principal/designated officer considers that the continued presence in the school of the staff member whose performance is considered unsatisfactory represents an unreasonable risk to the physical or mental welfare of the individual concerned, students, other staff members, other persons connected with the school, and/or represents a risk to property, and/or may otherwise adversely affect the school's good order the principal/designated officer, in consultation with the Secretary (or delegate)/employer, may remove the staff member from official duties at that school. Where action is taken to remove the staff member from duties the principal/designated officer shall immediately provide a report to the Secretary (or delegate)/employer. On receipt of a report the Secretary (or delegate)/employer may then:

- refer the matter to the principal/designated officer for action under clauses 4.1 to 4.6 of Ministerial Order No. 166, or
- take action under section 9 (teachers only) or section 45 or Part V of the *Teaching Service Act 1981* with respect to a member of the Teaching Service, or the relevant Ministerial Order with respect to a school services officer.

Contact

Conduct and Ethics Branch

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