

OTAGO POLYTECHNIC MANAGEMENT POLICY		Number: MP444.01
Title:	Resolving Performance Problems	
ITPNZ Standard:	4 Staff Selection, Appraisal and Development	
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Contact Authority:	Director: Organisational Development	Status: Current

Purpose The purpose of this policy is to ensure performance and disciplinary problems are managed in accordance with statutory provisions and best employer practice.

Background

Statutory Compliance Employment Relations Act 2000
State Sector Act
Education Act

Policy

1. Principles

- 1.1 Otago Polytechnic will endeavour to ensure employees are fully aware of the standards of work performance and behaviour expected of them.
- 1.2 Work performance standards are set out in employment agreements and in other communications from Otago Polytechnic from time to time. Behaviour standards are set out in Section 4 - Code of Conduct and in other communications from Otago Polytechnic from time to time.
- 1.3 Management will attempt to resolve work performance problems before they become an issue for formal disciplinary action.
- 1.4 Regrettably there will be occasions when problems with standards of performance or breaches of the Code of Conduct will occur that need to be dealt with in a formal way, in accordance with Otago Polytechnic disciplinary procedures.
- 1.5 Disciplinary procedures will comply with the principles of fairness and natural justice:
 - Otago Polytechnic will ensure that the employee is fully aware of the relevant details of the complaint.
 - The employee will be given a full opportunity to respond to the complaint.
 - Otago Polytechnic will be fair and reasonable in decision making.
- 1.6 Disciplinary procedures will be applied objectively, fairly, reasonably, consistently and in a timely manner.
- 1.7 Where practicable, investigation of disciplinary matters will take place without undue delay, so that issues can be resolved promptly.
- 1.8 Except for cases of serious misconduct, before dismissing an employee Otago Polytechnic will give an employee an opportunity to change their behaviour or to improve their performance, hence the progressive disciplinary process.



2. Resolving Work Performance Problems

- 2.1 Where work performance is not reaching the required level, the responsible manager will raise the issues with the staff member as soon as possible after becoming aware of them.
- 2.2 Work performance problems will be managed in accordance with the Resolving Performance Problems Procedures.
- 2.3 The employee will be given a reasonable period and sufficient support to improve their performance to the required level.
- 2.4 Prior to a Manager instigating a formal process, Human Resources will be consulted.

3. Code of Conduct

3.1 Misconduct

The behaviour detailed below is deemed to be misconduct.

Misconduct includes but is not limited to:

- The use of insulting or abusive language which may cause offence to another person but which falls short of harassment.
- Wilful misuse of Polytechnic property including intellectual property.
- Failure to observe safety procedures, working in an unsafe manner, or failing to make proper use of safety equipment where such equipment is installed and/or supplied.
- Retrieving, storing or distributing or displaying inappropriate or offensive material in the workplace, by electronic or other means, except where such material is legitimately used for teaching or research purposes.
- Failure to report any work-related accident to the supervisor.
- Without good reason, failing to notify the supervisor as close as possible to the normal commencing time that you will be late or are unable to commence work for that day.
- Smoking in non-smoking areas.
- Persistent lateness or unauthorised absences.
- Failing to achieve reasonable and clearly communicated performance standards.
- Failure to notify of a conflict of interest.
- Disobeying a lawful instruction.

Otago Polytechnic considers that any disciplinary procedures must be flexible enough to take into account the individual and the nature of the problem involved, and the Polytechnic has the right to make such rules regarding employment behaviour as may be necessary from time to time.

3.2 Serious Misconduct

Otago Polytechnic considers some inappropriate behaviour to be of a very serious nature - this is termed serious misconduct. Serious misconduct is grounds for summary dismissal ie. dismissal immediately without notice.



Serious misconduct includes but is not limited to:

- Any wilful act causing or likely to cause injury or danger to life.
- Unauthorised altering of any Otago Polytechnic records, including but not limited to employment records, personnel records, student records and/or other Polytechnic records or information.
- Unauthorised disclosure or use of confidential information.
- Unauthorised possession of Otago Polytechnic property or another person's property.
- Wilful damage of the Polytechnic's or other property, in the course of their employment, without reasonable excuse.
- Intimidation, bullying, harassment, or victimisation of staff or students
- Being under the influence of alcohol or drugs as to be, in the opinion of the employee's supervisor, not able to perform normal duties properly and safely.
- Possessing, or using prescription or prohibited drugs while on Otago Polytechnic premises or on Polytechnic business without a reasonable excuse or lawful authority.
- Refusing to obey a legitimate instruction.
- Smoking in areas where smoking is deemed to be dangerous.
- Bringing Otago Polytechnic into disrepute.
- Where an employee enters into a relationship with a Polytechnic student that the employee has power over, and the employee fails to declare the conflict of interest or protect the interests of the student or Polytechnic.
- Behaviour which is described above as misconduct, but which in the circumstances of a particular case is more serious than usual.

4. Progressive Disciplinary process

4.1 For conduct categorised as misconduct, a Progressive Disciplinary process will be used.

4.2 For all Disciplinary processes a formal investigation process as detailed in Appendix 1 (Procedure for resolving Performance problems) will be followed.

4.3 Progressive Discipline consists of the following steps

1. **Warning**
2. **Written Warning**
3. **Final Written Warning**
4. **Dismissal**

Step 1 First occurrence of misconduct may result in a **warning** - details of which are recorded in the employee's employee file. While a warning is recorded in writing it is not a second step written warning.

Step 2 Further occurrence of misconduct may result in a **Written**

Warning.

Step 3 Third occurrence of misconduct, or first occurrence of conduct which could justify dismissal may result in a **Final Written warning**.

Step 4 Fourth occurrence of misconduct or first occurrence of serious misconduct may result in **Dismissal** – with or without the notice provided in the relevant employment agreement depending on the individual circumstances.

4.4 Human Resources must be consulted before any disciplinary investigation is commenced.

4.5 The Director: Organisational Development must be consulted before any formal warning is issued.

4.6 Copies of any warning documentation under step 1-4 must be given to the employee as well as kept on the employee file.

4.7 Depending on the seriousness of the incident the first or other steps may be skipped.

4.8 Progression from one step to another is where there is another occurrence of misconduct a similar (but not necessarily identical) nature while a warning is in effect.

The effective duration of a warning may or may not be specified. If it is not, it applies for a reasonable time having regard to the nature of the misconduct, and the seriousness of the further occurrence. All warnings will be kept on the Employee File.

National Guidelines

Referral Documents

Procedures for Resolving Performance Problems (Appendix A)
Employment Agreements
CP0012 Conflict of Interest



Schedule 1:**RESOLVING WORK PERFORMANCE PROBLEMS**

While it may ultimately be necessary to employ the formal disciplinary process to resolve a case of failure to achieve reasonable performance standards, in most cases managers will have followed a less formal process to improve performance first.

Where standards of performance have not been set and communicated to the employee, managers will review the position description with the employee and set reasonable and objective standards.

Where performance standards have been set and communicated and an employee fails to perform to the required standard, managers will:

- Review the employee's performance and provide objective feedback on the employee's performance in relation to the relevant performance standard. The Polytechnic will use its best endeavours to ensure the employee is fully aware of the problems with their performance.
- Review the employee's workload to ensure that there are no unreasonable expectations.
- Clarify the performance standards expected of the employee initially verbally and then set them out in writing.
- Discuss with the employee strategies to achieve the required level of performance, including determining if training is required and what action it is practicable for Otago Polytechnic to take to assist the employee.
- Determine the timeframe for improvement and how the improvements will be assessed.
- Carry out any action and/or provide any support agreed.
- Monitor the employee's performance during the agreed timeframe.
- Review progress at the time agreed.
- Keep file notes of discussions with the employee as an informal record.
- The employee must be invited to have a support person and/or representative at any meeting.

If this process does not resolve the performance problem, the manager will decide if the issue is serious enough to progress to the formal disciplinary process. If disciplinary action is to be taken the employee will be advised of this and a letter similar to the example letter in appendix 2 will be issued.

Managers should consult the Human Resources Department for advice as needed during the performance counselling process and must consult before commencing any formal disciplinary action. A sample letter for documenting performance concerns and agreed actions is attached as Appendix B. Human Resources must be consulted prior to issuing a letter of this kind.

Schedule 2:

PROGRESSIVE DISCIPLINARY PROCEDURES

1. PRELIMINARY INVESTIGATION

A preliminary investigation should be carried out to determine whether or not the matter should continue further.

- Seek advice from Human Resources, especially if serious misconduct is suspected.
- Interview the complainant.
- Gather any evidence that is readily available.

2. MAIN INVESTIGATION

Define the Allegation

- Investigate the complaint / problem fully and promptly.
- Gather specific examples. Check and photocopy relevant records.
- Consider extent of contributing factors – organisation culture, the input of others to the situation, constraints, etc.
- Check past practices for similar events or contradictory behaviours.
- Document all actions taken to investigate.
- Keep investigation as confidential as possible.
- Interview the employee (see below).
- If the employee's version of the facts differs from the complainant's, interview witnesses (internal and external if appropriate) and record their statements.

Advise Employee of Investigation Meeting in writing

- Advise of time and place of meeting.
- Advise employee of their right to take advice and have a representative and/or support person at the meeting.
- Any meeting letter must be reviewed by Human Resources.
- Advise employee of the complaint/problem in accordance with the employment agreement in sufficient detail for the employee to have a fair opportunity to consider their response.
- Make sure the employee has been told what any investigation to date has revealed. It is not acceptable to disclose information bit by bit in order to trap the employee.
- Explain the degree of seriousness of the matter including the possible range of outcomes if the complaint/allegation is upheld.

Meeting with the Employee

- Describe the disciplinary process and possible outcomes.
- Describe the complaint or performance problem and indicate how it would constitute a breach of the employment agreement or Otago Polytechnic policy.
- In the case of performance issues, describe the actions that have already occurred to assist in improving performance.
- Ask for and listen to the employee's explanation.
- Respond to questions from the employee. Don't withhold information in an effort to trap the employee into an admission or lie.
- Decide if there is a need to adjourn to investigate further. Does the employee's version need to be verified?
- If no need to investigate further, adjourn to review evidence and make decision (may only need to adjourn for 10 – 15 minutes, then reconvene to convey decision, more serious or complex cases could take longer).



- Make sure you consider the full range of options for further action and consider which is appropriate in this case. Be consistent with any similar decisions.
- Tell employee what the next steps are.
- Have another Manager/HR representative present throughout the proceedings.
- Keep detailed records of what was said at the meeting.

Adjourn to continue Investigation

- Gather more information, interview / re-interview witnesses if necessary.
- Advise employee of second meeting.
- If the employee's version of the facts differs from the complainant's, interview witnesses (internal and external if appropriate) and record their statements

Second Meeting with Employee (if necessary)

- Before or at the start of the meeting, give the employee any new information that has been obtained
- Listen to what the employee has to say.
- Tell the employee a decision will now be made which will be communicated at the next meeting. Say when that meeting will be. If the matter is relatively straight forward, make decision (may only need to adjourn for 10 – 15 minutes and then reconvene to convey decision).
- Verify the employee's explanation after the meeting, if necessary. Also, if anything new emerges from that process which could influence the decision, the employee must have the opportunity to respond before a decision is made.

3. MAKING A DECISION

All evidence must be considered in decision making

You must consider:

- The seriousness of the incident.
- The frequency and nature of the problem: an emerging issue or a continuation pattern.
- The employee's past work record and length of service.
- The employee's past disciplinary and performance record.
- What action has already been taken to resolve the problem.
- Any relevant training the employee has had.
- The employee's explanations during the meetings.
- Whether the employee's actions were in ignorance or deliberate.
- Any extenuating circumstances.
- What action has been taken in the past with other employees– consistency.
- **Is the punishment reasonable in the circumstances?**
- What would a reasonable employer do?
- Any implications for other employees.
- Is there reasonable evidence to justify the decision if it is appealed?

4. CONVEY DECISION

- Meet with the employee to convey and explain decision.
- Ensure the employee is invited to have a support person/representative present if they wish.
- Have another Manager/HR representative present throughout the proceedings.
- Hold the meeting in a place that provides privacy during the meeting and when the employee is leaving the meeting.
- Do not get into a discussion with the employee as to whether or not the decision is right.

5. OUTCOMES

A. Oral Warning / Written Warning



- Outline the specific problem.
- Describe the employment agreement clause or Polytechnic policy that has been breached.
- Summarise the investigation and meetings that have taken place and the evidence that has been considered, including the employee's explanations.
- Describe any actions taken previously to resolve the problem.
- Refer to any existing oral or written warning if this is a further offence during a warning period.
- Give the decision resulting from the investigation – oral warning or written warning.
- Describe the action required of the employee to correct the problem.
- Describe the performance standards to be achieved by the employee in the case of performance problems.
- Describe what actions Otago Polytechnic will take to assist in resolving the problem.
- Clarify the timeframe for improvement and how improvements will be assessed.
- Explain the consequences of any further breaches or failure to meet the performance standards expected.
- Tell the employee how long the warning is valid for.
- Keep detailed records of what was said at the meeting.
- Warnings **MUST NOT** be prepared in writing in advance and issued during the meeting with the employee.
- Warning – After the meeting, record the oral warning in a file note and place on the employee's personal file. Provide a copy to the employee and have them sign the file copy.
- Written Warning – After the meeting follow up with a letter recording the written warning, setting out what performance standards the employee needs to achieve, the time frame for improvement and the potential consequences of any further disciplinary action within the period the warning is valid. Put a copy of the letter on the employee's personal file.

B. Dismissal with Notice

Except in cases of serious misconduct, dismissal will usually only occur following a history of oral and written warnings in the preceding 12 month period. No dismissal should be carried out without having first taken advice from the Human Resources Department.

- Outline the specific problem.
- Describe the employment agreement clause or Polytechnic policy that has been breached.
- Summarise the investigation and meetings that have taken place and the evidence that has been considered.
- Describe any actions taken previously to resolve the problem.
- Refer to any previous related oral or written warnings.
- Give the decision
- Dismissal with Notice – give notice of dismissal for misconduct not justifying summary dismissal, the notice period to be in accordance with the employment agreement.
- Follow up by providing the employee with a letter setting out the breach of the employment agreement or policy, the evidence substantiating the breach, any action taken previously to resolve the problem, previous warnings, formal notice of dismissal and when effective. Advise of final pay arrangements.
- UNDER NO CIRCUMSTANCES should the letter be prepared in advance and issued during the meeting with the employee

C. Other Outcomes

- Anything else?
- 2nd Written warning instead of dismissal
- Loss of potential increment
- If appropriate, transfer to different position, location
- Withdrawal of privileges (eg. approval to attend conference, etc.)



D. Summary Dismissal For Serious Misconduct

Serious misconduct usually arises from a breach of the serious misconduct rules of the Code of Conduct.

Managers must consult the Human Resources Department for advice and assistance before taking any action in a case of suspected serious misconduct.

- Suspension

- It may be necessary to remove the employee from the workplace during the investigation period, particularly if it is a case of suspected serious misconduct.
- Suspension may be appropriate where the misconduct is such that it is not possible to carry out the investigation if the employee is present, or if there is the risk of further serious misconduct if the employee remains on site, or if the situation has become too sensitive.
- Before making a decision to suspend the employee must be given the opportunity to take legal advice and to be represented at the suspension meeting
- Before suspending an employee, inform the employee that it is proposed to suspend them on full pay and the reason the suspension appears to be necessary.
- Investigate and meet with the employee as set out in the policy, remembering that if the allegations are serious they must be resolved as soon as possible.

If the allegation against the employee is subsequently found to be without substance, the employee is entitled to resume their position.

- Placement on Other Temporary Duties

- Place the employee on alternative temporary duties to remove them from the immediate workplace, in situations where it is deemed unnecessary to remove them from the Polytechnic completely.
- Again this should not be done without prior consultation with the employee, them having the opportunity to take legal advice and to be represented at the meeting.
- Ensure the employee has been clearly informed of the responsibilities and performance standards expected in the temporary duties, as well as of any other specific requirements during the assignment

- Summary Dismissal

- Consult the Human Resources Department for advice.
- Ensure all action is consistent with the employee's employment agreement.
- Determine if it is necessary to suspend the employee or to move the employee temporarily while carrying out the investigation.
- Inform the employee of the problem as outlined in the Progressive Disciplinary Procedures.
- Investigate the problem, meet with the employee and make a decision as outlined in the Progressive Disciplinary Procedures.
- Ensure the employee is aware of their right to representation.
- Ensure the evidence for the final decision will stand up to scrutiny as the consequences of the decision are serious and substantial and may be appealed.
- Convey the decision to the employee:
 - outline the specific problem
 - describe the employment agreement clause or Polytechnic policy that has been breached
 - summarise the investigation and meetings that have taken place and the evidence that has been considered, including the employee's explanations
 - give notice of immediate dismissal
 - advise of final pay arrangements.
- Follow up with a letter summarising the serious misconduct breach, the evidence substantiating the breach and notice of dismissal. Advise of final pay arrangements.

- UNDER NO CIRCUMSTANCES should this letter be prepared in writing in advance and issued during the meeting with the employee.



LETTER TEMPLATE

(Letter to be modified to suit the circumstances and must be reviewed by HR before being issued)

Dear

Re: Performance Problems

Thank you for meeting today to discuss your work performance. This records the key points discussed.

We have met on several occasions to address issues concerning your work performance. The specific areas of concern that have been outlined to you are:

- 1.
- 2.

The following measures have been put in place to assist you in meeting the required levels of performance:

- a.
- b.

Despite these measures, your performance has not improved to the required standard and I described the following to illustrate this:

- i.
- ii.

(Attach relevant documents / evidence)

The outcome of our meeting is are that your performance will continue to be monitored while I am confident that there will be no further areas of concern, if your performance does not reach the required standard within??? weeks, formal disciplinary action may be considered.

Yours sincerely

cc Employee file



Process Flowchart

