



49

PROVINCE OF KWAZULU-NATAL
ISIFUNDAZWE SAKWAZULU-NATALI
PROVINSIE KWAZULU-NATAL

DEPARTMENT OF EDUCATION
UMNYANGO WEMFUNDO
DEPARTEMENT VAN ONDERWYS

Telephone: (033) 846 5293
Fax : (033) 846 5222

Private Bag X9137
Pietermaritzburg
3200

228 Pietermaritz Street
Pietermaritzburg, 3201

INHLOKHOHOVISI

HEAD OFFICE

PIETERMARITZBURG

Enquiries : MR T L HLELA
Imibuzo:
Navrae:

Reference: 4/S/P
Inkomba:
Verwysing:

Date : 2001105/25
Usuku:
Datum:

**TO: SENIOR GENERAL MANAGERS
GENERAL MANAGERS AND MANAGERS
THE SUPERINTENDENTS OF EDUCATION: MANAGEMENT (SEMs)
HEADS OF EDUCATIONAL INSTITUTIONS**

HRM CIRCULAR NO. 49 OF 2011

PROCEDURE MANUAL FOR THE MANAGEMENT OF POOR PERFORMANCE

1. The performance management responsibilities of Supervisors at all levels include the Management of Poor Performance. In fulfilling this responsibility Supervisors are required to adhere strictly to the applicable rules and procedures as any deviations could jeopardize the fairness and validity of the actions taken. It is, therefore, crucial that Supervisors at all levels acquaint themselves with the relevant prescripts as well as the rules and procedures relating to the management of poor performance.
2. You would appreciate that there is a need to ensure consistency in the interpretation and application of the relevant rules and procedures. It is against this background that the attached "Procedure Manual on the Management of Poor Performance for Public Service Personnel and Educators" is being issued. These guidelines would assist Supervisors in discharging their responsibilities relating to the management of poor performance.
3. The contents of this Circular must be brought to the attention of all employees.


NKOSINATHI S P SISHI, PhD
HEAD OF DEPARTMENT : EDUCATION

DATE... 2011 — 06 — 25

KWAZULU-NATAL DEPARTMENT OF EDUCATION

PROCEDURE MANUAL ON THE MANAGEMENT OF POOR PERFORMANCE FOR PUBLIC SERVICE EMPLOYEES AND EDUCATORS

1. INTRODUCTION

The managing of performance of employees is crucial for effective Service Delivery within any organisation like this Department. This would require a disciplined work force focused on and capable of achieving its core responsibilities and as such there is a need to deal effectively and decisively with poor performance. This will have to be done in accordance with the relevant prescripts and the responsibility of managing performance of employees within the Department lies with all supervisors /managers.

2. PURPOSE

The purpose of this Manual is to:-

- Provide practical procedure directives to Supervisors on managing poor performance
- Elucidate certain principles applicable to the management of poor performance
- Identify different role players and their responsibilities in this regard
- Provide a brief overview of the processes involved with regard to the management of poor performance

3. SCOPE OF APPLICABILITY

The guidelines contained in this Manual are applicable to:-

- All employees appointed in terms of the Public Service Act, 1994(Act 103 of 1994), as amended, and
- All educators appointed in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), as amended.

4. BACKGROUND

Performance Management is viewed in some instances as an incentive instrument whilst in other instances it is viewed as being punitive. This notion is incorrect as employees who perform their jobs well do not receive higher salary increases than those who perform poorly. Performance Management is essentially a management tool to ensure that employees know what is expected of them, to identify poor

performance and to reward good performance. However, it is evident from existing trends that the performance of employees within the Department is not being managed effectively in that the majority of employees are being accorded unrealistically high scores in their performance assessment and this is not commensurate with the overall performance of the Department. Moreover, the rules and procedures relating to the management of poor performance are being inconsistently implemented and as a result difficulties are being experienced in instituting action against poor performers. It is against this background that these procedure directives are being issued with a view to assisting supervisors in fulfilling their performance management responsibilities

5. LEGAL AUTHORITY

5.1. The guidelines are underpinned by the following pieces of Legislation:-

- Constitution of the Republic of South Africa, 1996 (Act 106 of 1996)
- Labour Relations Act, 1995 (Act 66 of 1995), as amended
- Public Service Act, 1994 (Act 103 of 1994) as amended
- Public Service Regulations, 2001, as amended
- Employment of Educators Act, 1998 (Act 76 of 1998) as amended read in conjunction with schedules 1 and 2 of the same Act
- SMS Handbook
- PSCBC Resolution 10 & 12 of 1999
- PSCBC Resolution 1 of 2003

5.2 In addition the following prescripts also have relevance in managing poor performance:-

- Skills Development Act, 1998 (Act 97 of 1998)
- Employment Equity Act, 1998 (Act 55 of 1998)
- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)
- Public Financial Management Act, 1999 (Act 1 of 1999)
- Promotion of Access to Information Act 2000 (Act 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
- Relevant DPSA Determinations, Directives and Circulars
- Relevant Collective Agreements
- Relevant Departmental Directives and Policies.

6. THE RESPONSIBILITIES OF DIFFERENT ROLE PLAYERS

6.1 The responsibility to ensure that the performance of employees are managed effectively vests with:-

- The Executing Authority / Head of Department
- Managers / Supervisors at all levels as custodians of the interest of the State as employer and in terms of delegated authority (where applicable)
- Staff functionaries (Personnel and Labour Relations Practitioners) who have the responsibility of providing suitable policy and advice to line functionaries and to assist them where and when required to do so, and
- Persons / Employees, who are appointed in terms of the relevant prescripts to conduct investigations into misconduct, officiate at misconduct hearings / enquiries into incapacity / inefficiency as Chairpersons of such inquiries or as Prosecutors.

6.2 These role players are required to ensure that due (fair) process is followed in accordance with the prescripts

7. ROLE OF THE SUPERVISOR

Supervisors, at all levels, must : -

- accept and carry out the responsibilities relating to the management of performance;
- ensure, within reasonable limits, that their staff members are aware of and understand what is expected of them in terms of the rules, performance and behavioural standards that they have to comply with;
- address poor performance by:-
 - o focusing in the first instance on the problem and not the person who transgressed;
 - o placing emphasis on corrective measures, and not punitive measures, but punitive measures shall serve as the vehicle to correct deviations from the norm, where required;
 - o addressing problems at the earliest possible stage and disciplinary action should not be withheld until the problem situation has grown out of proportion;
 - o ensuring that they are fully acquainted with the facts before they act;
 - o applying the *audi alteram partem rule* in all instances i.e. listen to and consider the other parties explanation / response before taking action;
 - o ensuring all actions taken and the procedure followed are fair and this is referred to as substantive and/ or procedural fairness;
 - o ensuring sanctions, if appropriate, are handed out even handedly and in this regard there ought to be consistency when handing down sanction for comparable transgressions;
 - o ensuring that the requirements of the prescripts are understood before acting;

- acting within delegated authority as the fairness and validity of the action or the process would be jeopardised if persons perform unauthorised actions; and
- recognising the basic rights of an employee who is being disciplined to:
 - be heard;
 - be represented or assisted by a fellow employee or by a representative of a recognised Union;
 - have reasonable access to relevant documents to prepare a proper defence and have his/her case considered objectively

8. CATEGORIES OF POOR AND NON PERFORMANCE

Poor performance can be classified into two categories viz poor and non-performance on account of incapacity and poor and non-performance on account of Misconduct. The former category arises from external factors or the inadequacy of competencies to perform the job and therefore any formal action must be preceded by support and development of the affected employee by the Supervisor. The latter category is attitudinal in nature and therefore necessitates corrective counselling and/or charges of misconduct in terms of the relevant prescripts as indicated hereunder :

- Public Servant Personnel : Disciplinary Code and Procedures as contained in PSCBC Resolution 1 of 2003; and
- Educators : Incapacity Code and Procedure for Poor Work Performance as contained in Schedules 1 & 2 of the Employment of Educators Acts.

9. PRINCIPLES GUIDING THE PROCESS

In instituting any process to deal with poor and non performance, the following guiding principles must be taken into account :

- The employee must be aware of the level or standard of performance expected of him/her as contained in the Performance Agreement and Workplan of the employee.
- Evidence of under-performance must be produced.
- The decision must be based on the continuous assessment of the employee's performance during the Performance Assessment Cycle.
- The employees right to appeal the assessment results is observed.
- The employee must be afforded a right to be represented by a fellow employee or a trade union representative.
- The extent to which the necessary support mechanisms have been instituted to enhance performance.

- A determination must be made whether the employee's poor performance is the result of inability to perform at the required standard or whether the employee has the ability to perform at that standard, but deliberately under-performs.
- An assessment of the work performance must be done with due regard to the following:
 - o Impact of the poor work performance on service, component, colleagues and public
 - o Extent to which employee fails to meet standard
 - o Extent to which employee lacks necessary skills to perform the job
 - o Circumstances of the employee

10. PROCEDURES TO DEAL WITH POOR AND NON-PERFORMANCE ON ACCOUNT OF INCAPACITY

Should poor performance be detected at any stage of the performance cycle, the understated procedures must be instituted immediately by the immediate supervisor.

10.1 Less formal

Step 1 Initiate Procedure

- Inform employee in writing of the reasons for invoking the incapacity code and procedures relating to poor and/or non-performance.
- Arrange a meeting with the employee to discuss matter
[Use Annexure A]

Step 2 Counsel Employee

- Allow employee to state their position on the alleged poor performance
- Depending on the employees response, do one of the following:
 - ❖ If employee agrees to poor performance:
 - o Assess and establish timeframe required for improvement
 - o Identify appropriate training to be given to employee, if required
 - o Agree on ways to deal with external factors affecting performance
[Use Annexure B]
 - ❖ If employee denies poor performance or fails to attend the meeting, give employee warning (preferably in writing)

that continued poor performance will lead to more serious action in terms of the disciplinary procedure
[Use Annexure C]

Step 3 Monitoring

- Monitor effects of strategy for improvement throughout identified timeframe period
- At end of the monitoring period, assess whether the employee has improved or not, and depending on the finding, do the following:
 - ❖ If the employee remedied the poor performance, inform him/her and terminate procedure
[Use Annexure D]
 - ❖ If the employee failed to remedy the poor performance, he/she must be given a written report and advised that this report will be discussed at a formal meeting
[Use Annexure E]

Step 4 Follow up consultation meeting

- Call employee to meeting – this can form part of a letter under cover of which written report is forwarded to the employee
 - Consult with employee by explaining outcome of procedure (i.e. discuss written report with employee) and measures to be taken to address any problems indicated in the report.
 - Consider the response of the employee and decide on the sanction to be applied which could be any one of the following:
 - ❖ Written warning
 - ❖ Final written warning
 - ❖ Proceed with step 5
 - If sanction is a warning or final written warning, issue it immediately after the meeting
[Use Annexure F or G]
 - Warnings remain valid for the following periods:
 - ❖ Verbal Warning: 3 months
 - ❖ Written Warning: 6 months
 - ❖ Final Written Warning: 6 months
- All written warnings must be kept by the supervisor on a file maintained in respect of the employee concerned and although its validity expires after the appropriate period it remains part of the records

Step 5 Referral to Directorate : Employee Relations

- If poor and non performance continues, the matter must be referred to the Directorate: Employee Relations for possible institution of a

formal enquiry into the allegations of poor performance in keeping with the relevant incapacity code and procedures.

[Use Annexure H and I]

- The Directorate: Employee Relations will consider the relevant documentation and, should sufficient justification exist, approach the Head of Department : Education or his delegate for approval to institute a formal enquiry and for the appointment of the Presiding Officer as well as the Prosecutor to inquire into the allegation of poor performance.

10.2 FORMAL ENQUIRY

A formal enquiry into the matter will be undertaken with due regard to the following:-

- The charged employee will be given 5 working days written notice of the date, time and place of the hearing and of the charges contemplated against him/her.
- The employee will also be advised of his/her rights to :
 - o be heard
 - o be represented or assisted by a fellow employee or by a representative of a recognised Trade Union
 - o have reasonable access to relevant documents to prepare a proper defence and have his/her case considered objectively
- Should the charged employee and/or his/her representative fail to attend the hearing without valid reasons, the hearing will proceed.
- During the enquiry :
- the prosecutor will be required to lead evidence of the poor work performance giving rise to the hearing and call witnesses and the employee or his/her representative may question the witnesses.
- The charged employee be allowed an opportunity to lead evidence in rebuttal and call witnesses and the prosecutor may question the witnesses
- The Presiding Officer must keep a record of the proceedings of the hearing.
- Following upon the formal enquiry, the Presiding Office may take one or more of the following decisions :
 - o Subject the employee to further training and counselling (steps 2 and 3)
 - o Embark on mentoring programme
 - o Place employee in a more appropriate job
 - o Demote the employee
 - o Dismiss employee
- Before implementing the option of placement in an alternative job or

dismissal, the employee must be given a hearing to present evidence in mitigation.

- If placement in different job entails lower pay, the employees agreement, in writing, must be obtained.
- Exercise the option/s decided upon
- If the employee does not agree to accept a placement in a different job where it entails lower pay, the option of dismissal shall be reconsidered.
- Employees may be assisted in all meetings in terms of this procedure by a co-employee or trade union representative.

11. PROBATIONARY APPOINTEES

The guidelines as contained in this manual apply *mutatis mutandis*, to employees / educators who are still serving a probationary period

12. REPORTING

- 12.1 The immediate supervisor must submit written reports on poor and non performance to the relevant Component Manager for consideration and further intervention. The Component Manager must also report such cases, on a quarterly basis, to Directorate : Performance Management
- 12.2 Performance Management Directorate to analyse all reports and prepare a consolidated report to the Head of Department : Education.
- 12.3 The Directorate: Employee Relations must submit reports on finalised cases relating to poor or non performance to the Head of Department : Education and a copy of which must be forwarded to the Directorate: Performance Management.

13. MONITORING & EVALUATION

- 13.1 All Component Managers will have to ensure that line function supervisors within their Components comply with the provisions of this document by undertaking ad-hoc validations of the processes.
- 13.2 The Directorate: Performance Management must also undertake monitoring and evaluation on a sample basis through a validation process.

14. DISPUTE RESOLUTION

Disputes arising from the interpretation and implementation of Performance Management Systems are dealt with in terms of procedures contained in the relevant dispute resolution mechanisms.

15. GLOSSARY OF TERMS

- Supervisor: Supervisor means an official responsible for the allocation of work, monitoring of activities, discussing performance and development, and, where applicable, Half Yearly Review and Annual Performance Assessments of an employee/ educator. In respect of employees/ educators attached to institutions the supervisor is the Head of Institution or his/ her delegate.
- fellow employee: an employee from the same office of the employee being charged.
- recognised trade union: all the unions admitted to the PSCBC as well as other unions that enjoy organisational rights within the Department.
- Component Manager: the Manager of the relevant Directorate in respect of employees/educators attached to offices and the relevant Superintendent of Education Management (SEM) in respect of employees/educators attached to Institutions.

ANNEXURE A

_____ [NAME OF EMPLOYEE]
_____ [RANK]
_____ [OFFICE/INSTITUTION]

Sir / Madam

ALLEGED POOR PERFORMANCE

I have noted that in the recent past your performance has not been meeting the required standards. The following are examples of where you failed to meet the required standards:

In keeping with the incapacity code and procedures for the Public Service, the matter is to be discussed with you. For this purpose you are required to attend a meeting in room _____ // my office on _____ [date] at _____ [time].

Please note that you have the right to representation by your Trade Union representative or a fellow employee during the meeting.

Failure to attend the meeting could result in the matter having to be considered through a formal enquiry.

Yours faithfully

SIGNATURE OF SUPERVISOR

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

ANNEXURE B

RECORD OF MEETING TO DISCUSS POOR/NONPERFORMANCE ON THE PART OF _____ [NAME]: _____ [PERSAL NO.]

1. During the meeting on _____ [date] where the matter regarding your poor/non-performance was discussed has reference.
2. It was noted that there was acknowledgement that you were not performing at the required standards.
3. Whilst you explained the reasons for the poor/non-performance, an agreement was reached with regard to the following:

Strategy to rectify poor/non-performance	Responsibility	Timeframe

4. It was also agreed that your Supervisor will monitor progress and you will be provided with feedback on _____ [date].
5. It was also noted that should there be no improvement in performance, the matter will be addressed through a formal enquiry.

SIGNATURE OF SUPERVISOR

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF EMPLOYEE REPRESENTATIVE

DATE:

ANNEXURE C

_____ [NAME OF EMPLOYEE]

_____ [RANK]

_____ [OFFICE/INSTITUTION]

Sir / Madam

WRITTEN WARNING FOR POOR WORK PERFORMANCE

In a letter dated _____ [date] you were invited to a meeting on _____ [date] to discuss your alleged poor performance.

It is, however, noted that you denied poor performance on your part/failed to attend the meeting to discuss the alleged poor performance.

In keeping with the incapacity code and procedures for the Public Service, you are hereby warned that continued poor performance will lead to more serious action in terms of the disciplinary procedures.

Details regarding your poor performance are as follows:

This written warning will be placed in a file maintained for this purpose and will remain valid for a period of six months from the date hereof. After six months, the warning will be removed from your file and destroyed.

If you object to the warning you may direct your appeal to _____ [name] within 5 working days from the date of receipt of this warning.

Yours faithfully

SIGNATURE OF SUPERVISOR

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

ANNEXURE D

_____ [NAME OF EMPLOYEE]

_____ [RANK]

_____ [OFFICE/INSTITUTION]

Sir / Madam

ALLEGED POOR PERFORMANCE

Since the meeting on _____ [date] there has been a marked improvement in your performance. In fact, you have remedied your past poor performance.

In the circumstances it has been decided to terminate the incapacity code and procedures which were previously instituted.

I trust that you will continue to maintain acceptable standards of performance in the future.

Yours faithfully

SIGNATURE OF SUPERVISOR

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

ANNEXURE E

_____ [NAME OF EMPLOYEE]
_____ [RANK]
_____ [OFFICE/INSTITUTION]

Sir / Madam

APPLICATION OF INCAPACITY CODE AND PROCEDURES: REPORT AND CONSULTATIVE MEETING

During our meeting of _____ [date] we, in terms of the incapacity code and procedures for the Public Service, *inter alia*, agreed that you be allowed _____ [agreed time frame] to remedy your poor performance.

The above-mentioned period lapsed on _____ [date]. Attached please find a report on the outcome of the procedures. In order to discuss the report, you are requested to attend a meeting in room _____ // my office on _____ [date] at _____ [time].

Please note that you have the right to representation by your Trade Union representative or a fellow employee.

Failure to attend the meeting could result in the matter having to be considered through a formal enquiry

Yours faithfully

SIGNATURE OF SUPERVISOR

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

ANNEXURE F

_____ [NAME OF EMPLOYEE]
_____ [RANK]
_____ [OFFICE/INSTITUTION]

Sir / Madam

WRITTEN WARNING FOR POOR WORK PERFORMANCE

This is a warning in terms of the incapacity code and procedure for the Public Service. Should you continue to perform at a poor standard this written warning may be taken into account in determining a more serious sanction.

This written warning will be placed in a file maintained for this purpose and will remain valid for a period of six months from the date hereof. After six months, the written warning will be removed from the file and destroyed.

If you object to the warning you may direct your appeal to : _____ [Name] within five working days.

Details regarding your poor performance are as follows:

Yours faithfully

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

ANNEXURE G

_____ [NAME OF EMPLOYEE]

_____ [RANK]

_____ [OFFICE/INSTITUTION]

Sir / Madam

FINAL WARNING FOR POOR WORK PERFORMANCE

This is a final warning in terms of the incapacity code and procedure for the Public Service. Should you continue to perform at a poor standard this final warning may be taken into account in determining a more serious sanction.

This final written warning will be placed in a file maintained for this purpose and will remain valid for a period of six months from the date hereof. After six months, the final written warning will be removed from the file and destroyed.

If you object to the final warning you may direct your appeal to : _____ [Name] within five working days.

Details regarding your poor performance are as follows:

Yours faithfully

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

REQUEST BY SUPERVISOR TO INSTITUTE FORMAL ENQUIRY INTO ALLEGATIONS OF POOR WORK PERFORMANCE

To: The Directorate : Performance Management
Department of Education
Private Bag X9137
Pietermaritzburg
3200

INSTITUTION OF FORMAL ENQUIRY INTO ALLEGATIONS OF POOR PERFORMANCE: _____ [NAME] : PERSAL NO. _____

1. Mr / Ms _____ has been in the service of this Department since _____ [Date of appointment]. He / She are currently occupying the rank of _____ [Rank] and is currently serving _____ [Directorate/ Office / Institution].
2. Despite several interventions the employee has continued to render performance that does not meet the minimum standards. In this regard he has previously received verbal / written warning / final written warning relating to his poor work performance in keeping with the incapacity codes and procedures for the Public Service. Copies of the relevant warnings are enclosed herewith.
3. Notwithstanding the aforesaid warnings the employee has continued to perform poorly. The following are examples of where he / she again failed to meet the required standards:

4. In light of the above, the matter is being referred to you for the possible institution of a formal enquiry into the allegations of poor performance in keeping with the incapacity codes and procedures for the Public Service.

Yours faithfully

SIGNATURE OF SUPERVISOR

DATE:

NOTED AND FORWARDED

COMPONENT MANAGER

DATE:

ANNEXURE I

_____ [NAME OF EMPLOYEE]

_____ [RANK]

_____ [OFFICE/INSTITUTION]

Sir / Madam

ACTION IN TERMS OF INCAPACITY CODE AND PROCEDURE

Despite verbal / written / final written warnings being issued to you, your work performance has continued to be of an unacceptable standard. The following are examples of where you again failed to meet the required standards:

In keeping with the incapacity code and procedures for the Public Service, the matter is to be referred to the Directorate : Employee Relations for the possible institution of formal proceedings. The relevant directorate would direct further communication regarding this matter to you.

Yours faithfully

SIGNATURE OF SUPERVISOR

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE: