



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION



INCAPACITY POOR PERFORMANCE

**A total commitment is a paramount to reaching
the ultimate in performance. ~ Tim Flores**





- Public Service Act (Act no. 103 of 1994).
- Employment of Educators Act (Act no. 76 of 1998), Schedule 1 of the Act.
- Labour Relations Act (Act no. 66 of 1995), Schedule 8.
- PSCBC Resolution 10 of 1999 (Incapacity – poor performance).

DEFINITION



- ***Incapacity: poor performance*** is the inability or failure of an employee to meet reasonable performance standards set by the Department, where the failure to perform is not caused by ill-health or misconduct.

Considerations in Dealing with Poor Performance



Managers should consider the following when deciding to apply the procedures for incapacity poor performance:

- Awareness of the expected level of performance – Was the employee aware of the level or standard of performance expected of him or her?

Performance standards should be reasonable and attainable, be objectively measurable and the employee should be aware of the required standard. The performance of employees should be evaluated in terms of the **prescribed and agreed upon procedures, e.g. PMDS, IQMS** and other legislative imperatives. The outcome of the performance management systems should also be used as input for the incapacity: poor performance procedure.

Considerations in Dealing with Poor Performance



- Proof – Is there proof that the employee has in fact underperformed? Was performance traced over a period of time? Does the employee's performance assessment support the underperformance?
- Was adequate support provided for the employee to develop his or her capacity? Were any steps taken to address the employee's poor performance? Was a reasonable period of time allowed for improvement?
- **Inability vs. deliberate underperformance – Does the employee have the ability and capacity to perform, but deliberately under-performs, i.e. should the misconduct procedures be applied?**

THE FOLLOWING MUST BE CONSIDERED:



- the extent to which the incapacity impacts on colleagues and learners;
- the public and the work of the office or institution;
- the extent to which the employee fails to meet the required standards;
- the extent to which the employee lacks the necessary skills to perform;
- the nature of the employee's work and responsibilities; and
- the circumstances of the employee.

Procedure to be Followed



- The summarised procedure below is provided in detail in PSCBC Resolution no. 10 of 1999 - *Incapacity code and procedures for the Public Service*, as well as paragraph 1 and 2 of Schedule 1 of the Employment of Educators Act, (Act no. 76 of 1998), as amended.

RESOLUTION 10 OF 1999



1

- Initiating the Procedure

2

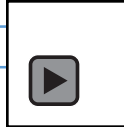
- Counselling the Employee

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- Monitoring

4

- Follow-Up Consultation Meeting



5

- Decision

6

- Inquiry/Hearing

7

- Appeal

8

- Implementation

STEP 1 - Initiating the Procedure



- The manager/supervisor must provide the employee with written reasons why it is necessary to initiate the procedure in respect of poor performance.
- To compile this, use:
 - **i. Job description and duty sheets. (PS)**
 - ii. Standards and performance contracts.
 - CAPS requirements for subject
 - iii. Qualitative and procedure guides.
 - Term planning
 - Learner assignments
 - No informal assessments done / copies of books
 - iv. Records of performance appraisals.
 - Hod feedback on books and files moderated
 - Facilitator feedback
 - Examples of moderation
 - IQMS/PMDS

STEP 1 - Initiating the Procedure



- Records of correspondence to the employee identifying shortcomings.
- vi. Records of the employee's ongoing training and development.
- vii. Any other reasonable policies developed to direct work performance.

Where an employee is suddenly not making the standard -

- Years of experience in the subject
 - ❖ Show previous good performance
 - ❖ Where different but similar subject – show similarities
 - ❖ Show how the poor performance is not due to lack of knowledge (Late marking or refusing to hand in or CMM)

STEP 1 - Initiating the Procedure



- Arrange a meeting with the employee and his trade union rep/ colleague (Form GDE/LR/PP/1 – Notice of meeting: Poor performance.. **(ON SITE)**)
- **Send out meeting notice at least 5 working days in advance)**
- During the meeting:
 - explain the requirements, grade, skills and nature of the job;
 - evaluate the employee's performance in relation to the job;
 - indicate the perceived poor performance; and
 - hear the employee's explanation on whether or not the
 - employee has performed as required and/or the reasons for not
 - having performed as required.
- **This meeting must have detailed minutes and must be signed by all parties.**
- **If parties refuse to sign ensure that minutes are signed by scribe and HOD/DEPUTY.**

STEP 2 - Counselling the Employee



- After hearing the employee, the manager/supervisor must develop and initiate a formal programme of counselling and training to enable the employee to reach the required standard of performance.
- i. Depending on the employee's response on the alleged poor performance do the following:
 - If the employee agrees to poor performance, move on to other actions under this step. **(ASSESS AND ESTABLISH TIMEFRAMES)**
 - If employee denies poor performance, give the employee a warning (preferably in writing) that continued poor performance will lead to more serious action in terms of disciplinary procedure. The warning must be filed and if the employee is not satisfied with the warning, he/she may object in writing and the objection must be filed together with the warning.

STEP 2 - Counselling the Employee



- Assess and establish timeframes required for improvement and to overcome the poor work performance.
 - (Initial meeting 3 months then 6 months final.)
 - Schedule of once off and once a week
 - Group meeting once a month – mini session
 - Hod to watch with deputy - continued work and report.
- Identify and provide appropriate training to be given to the employee if required. The applicable performance management system should be used as a guide.
 - Lesson plans, Research, Assignments, exam setting, marking schedule (HODS)
 - One thorough training which is all encompassing then once a week at least.
 - Report back and specific
 - Any deviation to be reported immediately
- Keep a record of efforts made to assist the employee with training, guidance and “on the job training”, as well as any formal training.
- Agree on ways to deal with external factors affecting performance.
 - Not excuse for “easier life”
- Keep detailed records of counselling sessions.
 - Two sessions

STEP 3 - Monitoring



- Monitor the effect or strategy for improvement throughout the identified timeframe.
- **If the employee fails or refuses to follow a formal programme of counselling and training, the supervisor/manager must initiate formal disciplinary proceedings against the employee by referring the matter to Dispute Unit.**
- 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 the procedure.
 - If the employee failed to remedy the poor performance, he/she must be given a written report on the outcome of the procedure and proceed with the next step.

STEP 4 - Follow-Up Consultation Meeting



- Call the employee to a follow-up meeting and provide a written report to the employee. (Form GDE/LR/PP/2 Application of Incapacity Code and Procedures: Report and Consultation Meeting.)
- Consult with the employee by explaining the outcome of the procedure, i.e. discuss the report with the employee and the measures to be taken to address any problems indicated in the report.
- It is recommended that at **least two opportunities are given to an employee to improve, i.e. after two counselling sessions** the matter may be referred for an incapacity hearing. It is important that employees be advised during counselling that, if their poor performance continues and there is no improvement, they could be dismissed.

STEP 5 - Decision



- Following consultation with the employee, decide on appropriate action to take, which could include any one of the following:
- Provide further training to the employee.
- Provide counselling or mentoring to the employee.
- Recommend the transfer of the employee to a more appropriate position. (Lower salary)
- Refer the matter to the Directorate: Labour Relations for a formal inquiry.

STEP 6 - Inquiry/Hearing



- Before implementing the option of placement in an alternative job or dismissal, the employee must be given a hearing to establish failure to meet the requirements. (See attached Form GDE/LR/PP/3 – Action in terms of Incapacity Code and Procedure.)
- If placement in a different job entails a lower salary, the employee's agreement must be obtained.
- A formal inquiry, similar to a disciplinary hearing, facilitated by the Directorate: Discipline and Dispute Management must be held to give the employee an opportunity to make representations in response to the allegations of poor performance made against him/her.

This formal inquiry could lead to the demotion or dismissal of the employee.



STEP 7 - Appeal

- Employees may lodge an appeal with the MEC against a decision to demote, transfer or terminate their services on the grounds of incapacity.
- Appeal against the above decisions must be lodged in accordance with the applicable disciplinary procedures applicable to the employee.
- The employee retains the right to utilise the dispute settlement mechanisms provided for in terms of the Labour Relations Act no. 66 of 1995.

This means arbitration!!

STEP 8 - Implementation



Exercise the option decided upon.

Notes:

- The employee may be assisted in all meetings in terms of this procedure by a co-employee or trade union representative.
- It is advisable to bring a witness into the meeting where the employee is confronted with the decision of placement in an alternative job or dismissal.
- If the employee does not agree to accept a placement in a different job where it entails a lower salary, the option of dismissal is likely to be considered.

Temporary employees – Before absorption



- Always consider curriculum requirements
- These employees must be given minuted and detailed initial briefing and handover of their subject.
- Being in control of your school means being in control of curriculum!!!
- There must be weekly meetings and checks – if only short
- At the end of the first month and second month – report detailing every aspect.

Senior managers



- In the case of senior managers, the basic principle of procedural fairness that the employee must be heard, still applies. A senior managerial employee may not be dismissed for incapacity: poor performance without following a fair procedure.
- However, in the case of senior managers, the normal procedural rules relating to counselling, guidance and evaluation and even warnings for poor work performance may in appropriate circumstances be dispensed with.
- The basic consideration here is that senior managers are capable of appraising their own performance, i.e. they are considered able to recognise that they are performing poorly if, for instance, they do not meet targets and objectives set out in their performance agreements.