

Disciplinary Management

Purpose and Scope

At New Zealand Kindergartens (NZK) we understand that the majority of staff members come to work with the intention of being successful in their roles and experiencing positive growth and development. However, there may be times when disciplinary action (including warnings or dismissals)

The purpose of this procedure is to be open in communicating what constitutes a performance issue, when a performance management process may take place, what this process involves and the potential outcomes.

This procedure applies to the General Managers/Chief Executives (GMs/CEs) and staff members (whether permanent, fixed, casual or relieving) across the NZK network. The procedure applies at our workplace, at work events (such as offsite training) and outside our workplace (when it is related to our work or can be linked back to NZK).

Legislation

NZK's Performance Management Procedure is underpinned by the *Employment Relations Act 2000*. This procedure should be read in conjunction with the *Kindergarten Teachers' Collective Agreement 2022* (Part 6).

Key Definitions

NZK where this is referenced within the procedure this can be read as the local Association.

Performance expectations are outlined in each Association's position descriptions, NZK policies, procedures and Values, as well as various pieces of National and Local legislation as relevant to the workplace.

Misconduct occurs when a staff member fails to perform all, some, or one of the duties to the standards required or doesn't comply with work rules or work procedures, including negative, disruptive behaviour that impacts on our team. A single instance of misconduct on its own would not justify dismissal unless it is repeated.

Serious misconduct is a deliberate or careless action or behaviour taken by an employee that undermines the trust and confidence between the staff member and NZK. In the case of serious misconduct, it may be determined the matter is so significant that the employment relationship is unable to continue.

Suspension of employment with or without pay may occur in matters of Serious Misconduct. Before this occurs, the teacher will be provided with a reasonable opportunity to make submissions about the allegations and whether suspension is appropriate. However, where NZK is satisfied the welfare and safety of any kindergarten child or another kindergarten employee warrants it, immediate suspension may occur.

Fair Process requires that employers have a good reason to take disciplinary action and must follow the principles of a fair process.

Misconduct

Inappropriate language

Failing to follow reasonable employer instruction

Lateness to work

Minor breach to Policy or Employment Agreement.
E.g. Dress code not followed

Internet misuse

Serious Misconduct

Violent behaviour

Bullying, Harassment

Theft or Fraud

Illegal use of drugs or alcohol

Dishonesty

Behaviour that engages the health or safety of self or others

Good faith requires that employers, unions, and employees must act in a way that is truthful and will not mislead each other. The elements and examples of good faith are outlined in the NZK Grievance Procedure.

Principles of a Fair Process

Fully investigate the concerns	Properly raise concerns with employees
Give employees an opportunity to respond	Genuinely consider the employees explanations
Make the decision maker as impartial as possible	Employee may have a support person present
Employee has opportunity to seek independent advice	Treat employees without bias
Consider all options before making a decision	

Rights and Obligations

NZK must have a good reason for taking any disciplinary action following the principles of a fair process, as well as adhere to the requirements set out in the *Kindergarten Teachers' Collective Agreement 2022* (Part 6).

Staff members have an obligation to perform in their role to the best of their ability and act in the best interest of NZK and their local Association. This will require they follow the requirements under their position descriptions, NZK policies, procedures and Values, as well as any applicable legislation.

Disciplinary Management Procedure

Below is the process that should be undertaken when allegations of misconduct or serious misconduct have been raised. The procedure is in line with NZK's requirement to act in good faith and follow the principles of a fair process.

- ✓ **If there good reason to start a disciplinary process.** NZK will perform a preliminary investigation to decide whether a disciplinary process is required (e.g. Consider what the breach is, consider any evidence that supports the claim.)
- ✓ **Inform the employee of the problem.** NZK will inform the staff member there has been a matter raised that may warrant disciplinary action and will seek input from the staff member to support the investigation process. The staff member will be made aware they can have a support person/union representative at any stage of the process.
- ✓ **Investigate the problem.** NZK will sufficiently investigate the problem or allegation before taking any action against the employee. The size of the investigation will depend on many factors, including the seriousness of the issue and the potential consequences.
- ✓ **Formal Notification.** If, after investigating the problem, NZK considers that the problem may amount to misconduct or serious misconduct the staff members will be invited in writing to a meeting. The letter of invitation will provide the employee sufficient time to consider and prepare for their response to the allegations. The letter will:
 - Clearly identify the misconduct or serious misconduct and detail the evidence held. This will include any investigation report and witness statements (if there were witnesses.)
 - Be an opportunity for staff member to provide feedback/respond to the allegations
 - Advise the staff member of potential outcomes if allegations or concerns are proven

- Remind them to bring a support person or union representative to the meeting.
- ✓ **Formal meeting held** where the full allegations, concerns and investigation results are shared.
 - Both parties will have an opportunity to discuss the issues raised.
 - The staff member and/or their representative will have a chance to respond to the concerns.
 - The formal meeting will be documented
 - No decision will be made at the formal meeting.
- ✓ **NZK to consider what action to take**, if any. If no action is needed, the matter will be closed out and the staff member will be informed in writing. If disciplinary action is required, NZK will consider the staff members response and/or explanation and seriousness of the matter.
- ✓ **Preliminary decision** will be provided to the staff member and will include the proposed disciplinary action. The staff member will have an opportunity to respond to the preliminary decision before the final decision is made by NZK. NZK will consider employee feedback.
- ✓ **Final decision** will be delivered to the staff member in person, with written correspondence confirming this (with their union representative or support person present)

Dos and Don'ts

Do...

- ✓ Raise any concerns you have about your role expectations or company policy/procedures with your manager as soon as possible.
- ✓ Ensure you act in good faith and remain cooperative, honest, and professional throughout the disciplinary process.
- ✓ Refer to our Grievance Procedure for the steps you should take should you feel the disciplinary process is not fair or is not being done in good faith.

Don't...

- x Gossip with other staff members, or question witnesses regarding the allegations - it is important that all parties involved are shown respect and a level of confidentiality is maintained.
- x Make false or misleading statements during the discipline process – be honest. False or misleading information can have the potential to make the matter worse, even in situations where you feel this may protect others from discipline management.

Word of Warning

This procedure does not form part of an employee's contract of employment. However, it is important that you understand that a breach of this procedure may result in disciplinary action including but not limited to, termination of your employment. If you want to make a complaint or raise a concern regarding a breach of this procedure, please speak with your Head Teacher, or GM/CE.

Procedure Reviews

This procedure may be amended from time to time at the discretion of NZK. Please ensure you regularly review all company procedures, so the content is front of mind in all you do.

Related Procedures, Agreements and Frameworks

Teaching Council of Aotearoa New Zealand – Our Code Our Standards & Code of Professional Responsibility

Teaching Council of Aotearoa New Zealand – Mandatory Reporting Code of Conduct

Discrimination & Equal Opportunity Procedure

Sexual Harassment Procedure

Workplace Bullying Procedure

Grievance Procedure

[The Statement of National Education and Learning Priorities \(NELP\)](#)

Kindergarten Teachers Collective Agreement (KTCA)