

Harm to the student and to the employee is minimised by:

- Appropriate and timely action
- Confidentiality;
- Adherence to agreed procedures, both at the school and at the Catholic Education Office; and
- the provision of appropriate emotional support and pastoral care.

Investigations should be dealt with sensitively in order to minimise the potentially negative impact of the investigative process, with care taken in relation to the number of interviews to which the student is subjected.

3. Allegation defined

An allegation may be defined as:

- Statement or claim based on information received from a third party that indicates a student has been treated in an unacceptable or unlawful way by a member of staff;
- The Principal, staff or parents' observation of a student's behaviour which suggests misconduct by a staff member may have occurred towards that student;
- the Principal or another person witnessing misconduct or series of actions that suggest unacceptable treatment of a student by a staff member;
- direct disclosure from a student that misconduct by a member of staff has occurred towards him/her.

4. Reporting an allegation

Any allegation against an employee of the school, of misconduct of a sexual, physical, or emotional nature should be referred immediately to the Principal or to the Deputy, if the Principal is involved.

Those to whom the allegation is made should observe confidentiality throughout, which means that there should be no broadening of discussion regarding the allegation, except those persons specified in these procedures. It is important that the reputation of the employee and the child be protected, especially in the early stages of the process.

The person to whom an allegation is made should document the allegation and his/her action(s).

If an allegation is made against the Principal, the person receiving the allegation should immediately contact the Director of Catholic Education.

A report must be made to Family and Community Services (FACS)

Reporting obligations are outlined in the Care and Protection of Children Act 2007.

5. Definition of 'misconduct'

Misconduct is defined as conduct by an employee towards a student that is inappropriate within the circumstances of normal duties and the normal interaction between students and adults employed in a school. Of itself, this inappropriate conduct may not be serious enough to warrant summary dismissal, but may warrant action by the Principal to protect the student and/or to discipline or counsel the employee.

The following examples are illustrative only and not exhaustive:

- inappropriate discussion of matters of a sexual nature with a student;
- sharing print, film, video, CD, DVD, phone, computer, internet, storage devices or material containing offensive/inappropriate images or references;
- use of excessive force in restraining a student;
- inappropriate disciplinary actions against a student;
- constant public humiliation of the student.

6. Definition of 'serious misconduct'

Serious misconduct is defined as unlawful conduct by an employee towards a student, or conduct that is unacceptable within the circumstances of normal duties and the normal interaction between students and adults employed in a school. Serious misconduct can lead to the summary dismissal of the employee.

The following examples are illustrative only and not exhaustive:

- sexual touching, either over or under the clothing;
- sexual penetration;
- sharing print, film/video/CD/phone/DVD, computer storage devices or internet material with sexually explicit images or references;
- causing deliberate physical injury to a student;
- use of corporal punishment;
- seeking contact with a student, whether in or out of school time, to satisfy the employee's own needs;
- victimisation of a student in the classroom or yard, or outside school.

7. Role of the Principal

The Principal should document the details of the allegation as received, before discussion with relevant authorities.

Should the allegation take the form of a disclosure from a student, this student should be reassured that the allegation has been heard and noted. This student should then be reminded to keep the allegation confidential. The notifying student should be encouraged to discuss the allegation with his/her parents. If this happens, the Principal should also speak to the notifying student's parents to ensure that confidentiality is maintained.

The Principal should:

- listen carefully to the allegation;
- clarify the nature of the allegation;
- record the detail of the allegation;
- observe complete confidentiality at this stage with respect to the allegation, other than by communicating with the Catholic Education Office as set out below;

- ensure that the student is safe, and that appropriate support is offered or provided.

Once the Principal has clarified the details of the allegation, the Principal should contact the Director of Catholic Education. It remains the responsibility of the Principal to co-ordinate the response and to implement the action agreed.

If the allegation is against the Principal then the Deputy / Assistant Principal would follow the same procedures

8. Role of the Catholic Education Office

The Director of Catholic Education must be consulted by the Principal about each allegation of misconduct or serious misconduct made against an employee. The Director reserves the right to determine appropriate course/s of action, on the advice of the Principal and others with particular expertise.

The Director should establish whether any previous reports of allegations against the particular employee have been recorded, and similarly whether any earlier allegations have been made by this particular student.

9. Allegation of Misconduct: action

After consultation with and with the consent of the Director, the Principal should take the following steps:

- inform the employee that an allegation has been made against him/her;
- arrange a meeting with the employee (who should be encouraged to bring a representative) to detail the allegation and to provide the employee with an opportunity to respond;
- inform the employee about the availability of appropriate counseling and legal services;
- advise the employee in general about the steps to be taken to investigate the allegation;
- instruct the employee not to have any contact with the student(s) or other people involved in the allegation.

The Principal shall keep a written record of this and any other meeting with the employee.

The Principal may be required by the Director of Catholic Education to conduct an internal investigation in order to clarify the circumstances surrounding the allegation. In conducting the investigation, the Principal shall ensure that the maximum level of confidentiality is maintained. The Principal may choose to stand down the employee on full pay for the duration of the investigation.

10. No misconduct found: Response

Where the Principal has determined that the allegation is baseless, or that no further action is warranted, the Principal will advise both the employee and the person making the allegation that no further action will be taken.

- will seek information on the course of action to be taken by police;
- will work in conjunction with police;
- will not discuss the details of the allegation with the employee.

The Principal will not at this time initiate any investigation at the school level, even though a *prima facie* case may appear to exist so as not to jeopardise any police investigation.

In cases where the police advise that the matter will not be investigated, the Principal will:

- notify the duty officer of the District Office of FACS that an allegation of abuse has been referred to Police;
- advise the duty officer of the procedures being followed and seek advice on further action if any.

13. Serious misconduct: no charges laid

Where no charges are laid, the allegation is referred back to the Principal, who is obliged to consult with the Director to determine an appropriate response to the allegation.

For the purposes of protecting a student, the standard of proof required by the Director to support an allegation of serious misconduct is not necessarily the same as that required to secure a conviction in criminal justice proceedings.

There may be sufficient evidence in the opinion of the Director, after advice from the Principal and after consulting with the police, to substantiate a serious misconduct allegation in the absence of a criminal charge or conviction. This evidence may be sufficient to warrant disciplinary action, including summary dismissal.

An employee against whom the allegation has been made is entitled to have his/her side of the matter placed before the Principal in any further investigation or consideration of the evidence. The employee should be given an opportunity to respond to the allegation even though a response may have already been given to the police.

Where the Director decides to take disciplinary action (other than summary dismissal) against the employee, the steps noted in section 11 above will be followed.

Where the Director decides to take no further action, the Principal will assist the employee to take whatever action is necessary to re-establish his/her credibility in the eyes of colleagues and the community and will provide appropriate emotional support and pastoral care.

It is not usually appropriate in cases on alleged serious misconduct for the Principal to attempt to negotiate an outcome or reconciliation between the student and the employee.

14. Serious misconduct: charges laid

In circumstances where an employee is charged by the police, the Principal is required to co-operate with arrangements made by police for interviewing of the student at the school. If a parent cannot accompany the student during the police interview, a school representative, usually the Principal, should be present to offer support to the student.

The Principal should facilitate contact between the employee against whom the allegation has been made and the police. Interviewing of the employee by the police will normally take place away from the school.

The Principal will stand down an employee charged with an offence that constitutes serious misconduct until the matter is resolved. The decision about whether the employee is paid during this period is at the discretion of the Director.

15. Serious misconduct: conviction

A conviction in a court of law arising from an allegation of serious misconduct will result in the summary dismissal of the employee. Action to summarily dismiss an employee is the prerogative of the Director (*NT Catholic Schools Manual 2004, Section 5, Clause 31*).

An employee convicted in a court of law, who has been receiving a salary from the school while suspended, will have to repay all monies paid to them during that period of suspension.

16. Serious misconduct: no conviction

Where there is no conviction following a charge against an employee, the Principal will discuss the findings of the court with the Director.

The failure of a court to record a conviction against an employee charged with a criminal act constituting serious misconduct does not necessarily signal that the charge was unwarranted or that the employee has no case to answer.

Failure to return a conviction may result from any one of a number of circumstantial events unrelated to the original allegation (for example, refusal of the student to give evidence).

The Director will seek further information from the police investigation and, after consultation with the Principal, will make a decision on appropriate further action, if any.

An employee against whom the allegation has been made is entitled to have his/her side of the matter placed before the Principal in the further investigation and should be given an opportunity to respond to the allegation even though a response may have already been given to the police.

Where the Director decides to take disciplinary action (other than summary dismissal) against the employee, the steps noted in section 11 above will be followed.

The Director may also choose to dismiss the employee summarily.

17. Written report

The Principal shall maintain a confidential record of the allegation and the investigation processes, no matter what the outcome.

