



Department of
Education

A GUIDE TO THE DISCIPLINE PROCESS

Wages and Other Officers

Standards and Integrity

August 2015



Department of
Education

STANDARDS
AND INTEGRITY



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Introduction

The Department of Education is committed to delivering quality services that are responsive to the needs of our schools and wider community. Complaints are a valuable source of feedback and an important tool to assist the Department in achieving its goals for a strong public school system.

This document has been developed to provide employees about whom a complaint has been made (respondent), with information on how the Department will deal with complaints and in particular, the Department's disciplinary process. It aims to address a number of frequently asked questions that arise when employees find themselves involved in a formal disciplinary process and should be read in conjunction with the Department's *Staff Conduct and Discipline Policy*, located under "Our Policies" on the Department's intranet site.



The Discipline Process

There are a number of factors that will impact on whether a matter will require a formal disciplinary process. These factors take into account the very considerable public interest in the steps that the Department takes to ensure that students are safe and secure. The Department's actions to identify and effectively deal with allegations that relate to more serious misconduct not only ensure the reputation of the Department is maintained, but ensure that the reputation of innocent parties is also protected.

This information relates to wages and other 'non public service' officers who do not fall within the scope of the Disciplinary Process prescribed in Part 5 of the *Public Sector Management Act 1994*. The process used for dealing with teachers and public service officers is covered in another guide ("A Guide to the Disciplinary Process – *Public Sector Management Act 1994*").

What are the principles of procedural fairness?

The concept of procedural fairness is derived from the principles of natural justice. A process that demonstrates procedural fairness is one in which:

- Decision makers act fairly and provide reasons for decisions;
- The person affected is given a fair unbiased hearing;
- All parties including the employee have an opportunity to put their case where an adverse decision or finding is made; and
- All relevant arguments are considered and irrelevant arguments are excluded.

Procedural fairness does not necessarily require that a person be informed immediately of any allegation; a person only needs to be advised of the allegations and provided with an opportunity to respond or make a submission before any adverse finding is made.

Commencement

When the Department is made aware by any means that an employee may have committed an act of misconduct it is entitled to conduct an investigation into that allegation. This decision will be made by the Standards and Integrity Directorate based on an assessment of all the material and information available at the time. Even though the Department may initially take the decision to conduct an investigation, it can at any time decide to stop or cease that process, or take no further action.

A finalised investigation will result in one of two possible findings:

1. an act of misconduct; or
2. no act of misconduct.

If the Director General or her delegate finds that no act of misconduct was committed, the employee will be informed of that finding and advised that no further action will be taken. If it is found that the employee has committed an act of misconduct, they will be informed of that finding in writing, and of the proposed sanction to be imposed.

The sanctions that are possible following a finding are:

1. reprimand; or
2. dismissal.

If the Director General intends to apply one of these sanctions, the employee will be given reasonable opportunity, usually ten (10) business days, to comment on the proposed sanction. Any submissions the employee makes concerning the proposed sanction will be considered and the Director General may either confirm or vary the intended action in writing.

Investigation

If it is determined that the matter should be dealt with as a disciplinary matter, an investigation will be initiated and conducted by investigator(s) from the Standards and Integrity Directorate.

There is no requirement for the Department to advise an employee that they are under investigation, however, before a finding can be made that an employee has committed an act of misconduct, they will be notified in writing of the nature of the possible act of misconduct, in sufficient detail to allow them to respond, and the employee will also be advised of the range of disciplinary actions that can be taken if a breach is found to have been committed. The employee will be given a 'reasonable time' to respond to the allegation(s), usually ten (10) business days, and will have the opportunity to respond in writing, in person (formal interview), or both if the employee wishes. Employees are under no compulsion to provide a response, but any response they do provide will be considered.

If the employee chooses to take part in an interview, they will be interviewed by staff from the Standards and Integrity Directorate, and the interview will be recorded with a digital voice recorder to ensure integrity in the interview process. Employees are entitled to have a support person or representative present at any meetings or interviews held in relation to the disciplinary process.

Should I seek legal advice?

This is up to each individual: however, the payment of the lawyer is the employee's responsibility. If an employee is a member of a union, access to legal advice may be available through the union.

Can I Appeal against the finding or the action proposed?

Appeals in regards to decisions and findings made by the Department can be lodged with the Western Australian Industrial Relations Commission (WAIRC). The WAIRC can be contacted on website www.wairc.wa.gov.au.

How long will an investigation take?

Investigation timeframes vary depending on the circumstances of each matter; however, each investigation will be completed as soon as practicable.

Some of the factors which may influence timelines include:

- Whether the matter involves criminality or WA Police involvement;
- The number, nature and seriousness and/or complexity of the allegation(s);
- The number of witnesses to be interviewed and their accessibility;
- The location of the incident, for example whether officers have to travel in order to undertake their investigation.

Will I be removed or suspended during the investigation process?

In cases involving serious allegations, the Director General has discretion to consider whether an employee's continued presence on school premises constitutes a risk to the safety or welfare of students and, if this is considered to be the case, may order the employee to leave school premises and remain away until the disciplinary process against them has been finalised. This power applies to all categories of employees, whether or not they fall within the scope of the *Public Sector Management Act*.



FAQs relating to the Discipline Process

Will I know who made the complaint?

While there is a requirement to provide an employee with the substance of the allegations against them prior to any adverse finding being made against them, there is no requirement to disclose to them all the information held by an investigator. In some cases there may be an overriding public interest or certain legal protections that would prevent the disclosure of information concerning the identity of the person who made the complaint. Underpinning any decision to disclose information during the course of an investigation will be the need to comply with procedural fairness. Requests for information should be directed to the Director, Standards and Integrity Directorate, where they will be assessed on a case by case basis.

Will I receive a copy of the investigation report?

The Department will ensure an employee is provided with sufficient information to enable them to respond to the initial allegation(s). It is the policy of the Department not to disclose investigation reports to any party during a Disciplinary Process. This ensures confidentiality for all those involved in the process including complainants, respondents and witnesses.

At the completion of the disciplinary process, if an adverse finding is made or proposed against an employee, the employee will be provided with a copy of the investigation report. The report is provided to assist employees in responding to the proposed outcome and action.

Accordingly, they should not make use of the report [and any other supporting material] for any purpose that is not directly related to the proper conduct of the investigation or any subsequent appeal process. Improper use includes but is not limited to confronting witnesses, and/or sharing information contained in the report [and supporting

material] with persons not involved in the investigation process. If an employee still believes they need access to further information, they are to contact the case officer or the Director, Standards and Integrity Directorate, who will consider each request on a case by case basis. Nothing in this guide impacts on an employee's rights under the *Freedom of Information Act 1992*.

Can I be assured of confidentiality throughout the process?

The Department is committed to ensuring that matters of confidentiality are, and are seen to be, maintained and administered. Where it is necessary and prudent to do so, a line manager or Principal may be informed about an investigation and/or any disciplinary action taken or proposed to be taken in relation to an employee. This may include when an employee transfers to another work location during or following a disciplinary process.

What about anonymous complaints?

The Department is required to assess all anonymous complaints, and to deal with those complaints. It is however often difficult to fully investigate matters where the source of the allegation is unknown. The Department is also required to notify the Corruption and Crime Commission of any allegations of misconduct by its employees and each complaint lodged with the Department needs to be assessed on its merits, whether or not it is anonymous or otherwise. Therefore, when it is decided to treat these matters as disciplinary matters, the Department will investigate.

What will the Department do if the complaint is vexatious?

In cases where there are clear indications that the complaint is one of a vexatious or malicious nature and without any foundation, every effort will be made to gather evidence to support this.

What will the Department do if one of the involved parties provides false information?

In cases where it is suspected that an employee of the Department has given false, misleading or inaccurate accounts of the incident complained of or reported, the matter may become the subject of a formal disciplinary investigation. The Department has no authority to act against those who are not employees.

Will this complaint go on my personal record and what are the consequences?

Outcomes of disciplinary processes within the Department are maintained on confidential files, with restricted access, held by the Standards and Integrity Directorate in accordance with the Department's approved Record Keeping Plan. No information regarding a disciplinary process is held on an employee's personal file

What if I resign from the Department before a disciplinary process is finalised?

A decision as to whether to discontinue an investigation upon the resignation or end of contract of an employee will be based on a number of considerations. These factors will take into account among other things the nature and severity of the allegations. When a decision is made to continue an investigation, the formal disciplinary process will conclude, but further investigation may continue into the alleged incident(s) to satisfy the Department's risk assessment obligations. In this case, no adverse findings can be made against an ex-employee and no penalty imposed, however, the Department may determine that person's suitability for future employment based on the material gathered.

What formal support is there for employees?

Support for employees is available in a number of ways:

- Through discussion with their line manager, Principal or Regional Education Office;
- Through their union;
- Through professional associations;
- Through the Department's Employee Assistance Program – PeopleSense.



Additional Information and Contacts

For general information on the disciplinary and/or complaints process contact:

Standards and Integrity Directorate P: 1800 655 985
W: education.wa.edu.au/standardsandintegrity

For advice about the *Code of Ethics* and the Human Resource Standards contact:

Public Sector Commission P: (08) 9219 6000
W: publicsector.wa.gov.au

For advice on misconduct or corruption or to report a concern contact:

Corruption and Crime Commission P: (08) 9215 4888 Country: 1800 809 000
W: ccc.wa.gov.au

For advice on matters of State Government Administration contact:

WA Ombudsman P: (08) 9220 7555 Country: 1800 117 000
W: ombudsmanwa.wa.gov.au

For Personal Support Services contact:

PeopleSense P: 1300 307 912
W: peoplesense.com.au

Associations

Citizens Advice Bureau

P: (08) 9221 5711 W: cabwa.com.au

United Voice

P: 1800 199 890 W: unitedvoice.org.au

WADHSAA – Western Australian District High School Administrators’ Association

P: (08) 9574 2296 W: wadhsaa.wa.edu.au

WAESPAA – Western Australian Education Support Principals’ & Administrators Association

P: (08) 9351 2480 W: waespaa.com.au

WAPPA – Western Australian Primary Principals’ Association Inc

P: (08) 6380 1755 W: wappa.asn.au

WASSEA – Western Australian Secondary School Executives Association

P: (08) 6380 2985 W: wassea.asn.au

Useful Links

Information on relevant legislation acts and regulations, as well as Part 5 of the *Public Sector Management Act 1994* can be found on the State Law Publisher website: slp.wa.gov.au

Information on the Department’s *Staff Conduct and Discipline* policy can be found on the Department of Education’s intranet site: policies.det.wa.edu.au