



Department of
Education

A GUIDE TO THE DISCIPLINE PROCESS

Public Sector Management Act 1994

Standards and Integrity

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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 both employees and former 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/former 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 teachers and public service officers who fall within the scope of the disciplinary process set out in Part 5 of the *Public Sector Management Act* (Act). The process used for dealing with alleged acts of misconduct by wages and other staff is covered in another guide ("A Guide to the Discipline Process – Wages and Other Officers").

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 (Current Employees)

When the Department is made aware by any means that an employee may have committed a breach of discipline it can do one of three things:

1. Decide to deal with the matter as a disciplinary matter; or,
2. Decide that it is appropriate to:
 - a. Take improvement action with respect to the employee; or,
 - b. Take no action.

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 deal with the matter as a disciplinary matter, it can at anytime decide instead that it is more appropriate to either take improvement action or no action.

Commencement/Continuation (Former Employees)

In addition to the considerations outlined above, the Act also enables the Department to commence or continue a disciplinary process in relation to a person who is no longer an employee of the Department and these provisions are set out in the Public Sector Commission *Commissioner's Instruction No.4 Discipline – former employees*.

Where a suspected breach of discipline occurred when a person was employed by the Department, these provisions enable the Department to continue or commence disciplinary proceedings against the person if:

- The person is no longer employed in the public sector, under provisions of section 76(4) of the Act. In these circumstances, the 'former employee' is considered to be an employee of the Department for the purposes of discipline; or

- The person is now employed in another public sector body, under the provisions of section 76(7) of the Act. In these circumstances, the Department as the 'former employing authority' may act as if it is the actual employing authority of that person.

The decision to commence or continue an investigation concerning a former employee is based on a number of considerations. These factors will take into account among other things the nature and severity of the allegations and the likelihood of the former employee re-commencing employment with the Department. It is intended that disciplinary proceedings in relation to former employees are taken only in exceptional circumstances.

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. The Act prescribes that the Department is not bound by the rules of evidence and that the investigation should be conducted with as little formality as possible.

There is no requirement for the Department to advise an employee/former employee that they are under investigation, however, before a finding can be made that an employee/former employee has committed a breach of discipline, they will be notified in writing of the nature of the possible breach of discipline, in sufficient detail to allow them to respond, and the employee/former 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/former 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/former employee wishes. Employees/former employees are under no compulsion to provide a response, but any response they do provide will be considered.

If the employee/former 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/former employees are entitled to have a support person or representative present at any meetings or interviews held in relation to the disciplinary process.

Disciplinary Action (Current Employee)

Disciplinary Action which can be taken by the Department in relation to a breach of discipline means any one or more of the following:

1. A reprimand;
2. The imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last five (5) days during which they were employed by the Department before the day on which the finding of a breach of discipline is made;
3. Transferring the employee to another public sector body with the consent of the employing authority of the public sector body;
4. Transferring the employee to another office, post or position in the Department;
5. Reduction in the monetary remuneration the employee receives;
6. Reduction in the level of the employees classification;
7. Dismissal.

Disciplinary Action (former employee)

If the respondent is no longer employed in the public sector, **Disciplinary Action** which can be taken by the Department in relation to a breach of discipline means any one or more of the following:

1. A reprimand;
2. The imposition of a fine not exceeding an amount equal to the amount of remuneration received by the former employee in respect of the last five (5) days during which they were employed by the Department before the day on which the finding of a breach of discipline is made.

If the respondent is employed in another public sector body, **Disciplinary Action** which can be taken by the Department in relation to a breach of discipline means any one or more of the following:

1. A reprimand;
2. The imposition of a fine not exceeding an amount equal to the amount of remuneration received by the former employee in respect of the last five (5) days during which they were employed by the Department before the day on which the finding of a breach of discipline is made;
3. Transferring the former employee to another public sector body with the consent of the employing authority of the public sector body;
4. Transferring the former employee to another office, post or position;
5. Reduction in the monetary remuneration the former employee receives;
6. Reduction in the level of the former employees classification;
7. Dismissal.

Should I seek legal advice?

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

Finding of a Breach of Discipline

If the Department finds that an employee has committed a breach of discipline, the Department must decide:

1. To take **disciplinary action** (as outlined above), or both disciplinary action and improvement action with respect to the employee/former employee;
2. To take improvement action; or,
3. That no further action is to be taken.

In the case of a 'former employee' who is no longer employed in the public sector, only options 1 and 3 above apply.

The employee/former employee will be notified in writing within 14 days of that decision being made. The employee/former employee will have a reasonable opportunity, usually ten (10) business days to respond to the notification of the proposed action. Any response the employee/former employee makes will be considered by the Department.

If the employee/former employee has been made aware of the disciplinary process they will also be notified within 14 days if the Department decides to discontinue the disciplinary process.

In respect to former employees who are employed elsewhere in the public sector, should the Department find that a breach of discipline has occurred; the Department must consult the former employee's current employing authority before taking any disciplinary action.

Improvement Action

An **improvement action** can be opted for by the Department either at the initial assessment stage, at any time during the disciplinary process, or at the completion of the process.

An **improvement action** means any one or more of the following actions for the purposes of improving an employee's performance or conduct:

1. Counselling;
2. Training and Development;
3. Issuing a warning to the employee that certain conduct is unacceptable or that their performance is not satisfactory;
4. Any other action of a similar nature.

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 Act.

In exceptional circumstances the Director General may consider suspending an employee either on pay, without pay, or on partial pay. Specific procedures apply to both these processes and employees will be provided with an opportunity to respond to the Director General's immediate action, or intention to act.



FAQs relating to the Discipline Process

Will I know who made the complaint?

While there is a requirement to provide an employee/former 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/former 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/former employee, the employee/former employee will be provided with a copy of the investigation report. The report is provided to assist employees/former 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/former 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/former 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/former employee. This may include when an employee/former 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/former 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/former 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/former employee's personal file

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

SSTUWA – State School Teachers Union of WA

P: (08) 9210 6000 W: sstuwa.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: www.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: www.policies.det.wa.edu.au