



Departmental response to alleged employee misconduct

This document is issued for general guidance only. It does not constitute professional advice. The issues with which it deals are complex and the document necessarily deals only with general principles. No reader should rely on this document for the purpose of making a decision as to action but should seek the appropriate advice from the Union on the particular circumstances of that reader. The Union accepts no responsibility for the consequences should any person act in reliance on this document without obtaining the appropriate advice from the Union.

This QTU advisory statement provides information and advice for teachers involved in Departmental investigations/management enquiry into alleged employee misconduct, either as the subject of the allegations or as a possible witness, i.e. someone who is not the subject of the allegation but may be able to provide some relevant information.

If you become aware that you are the subject of an investigation, you should contact your QTU Organiser immediately.

Types of investigation/management enquiry

Code of Conduct investigations/management enquiry

Code of Conduct – minor breaches

When a complaint is received and assessed to be minor in nature, Intake and Assessment within Integrity and Employee Relations (IER) can appoint the region, workplace or institution to do a management enquiry to provide managerial guidance to correct or resolve the issue. If the evidence supports the complaint, the maximum penalty is a managerial conversation.

Below are some examples that the Department believes to be minor breaches of the Code of Conduct:

- inappropriate or belligerent language directed at a colleague or member of the workplace community
- reporting unfit for duty through the affect of alcohol, drugs or medication.

Code of Conduct – non-minor breaches

When a complaint is received that is considered to be a non-minor breach of the Code of Conduct, Intake and Assessment within Integrity and Employee Relations (IER) may either investigate it itself or if the evidence supports the complaint,

the Department of Education's Workforce Review Unit will consider the findings of the report, with the possibility of starting a show cause process. If asked to show cause, you will have 14 days to respond to the allegations and explain why you should not be disciplined. If you do not adequately show cause, the unit then issues a penalty, which can range from a reprimand or a drop in pay to a transfer to another workplace or dismissal. You will have seven days to respond to the proposed penalty (second show cause letter). These and other prescribed penalties are found in the *Public Sector Act 2022* (Qld).

Below are some examples that the Department believes to be non-minor breaches of the Code of Conduct:

- misuse of a corporate credit card
- referring students to a private business where that employee has an interest
- sexual harassment of colleagues or members of the public
- harassment and bullying.

Student protection investigations/management enquiry

Important obligations are imposed on teachers in relation to reporting suspected harm to students, whether at the school or elsewhere. The term "harm" is widely defined.

Failure to comply with mandatory notification obligations can have very serious consequences for students. Teachers who fail to discharge these obligations are subject to disciplinary action and possible action in relation to their teacher registration.

Failure to report suspected sexual abuse of a student under the age of 18 years, as required by section 365 of the *Education (General Provisions)*

Act 2006 (Qld), is an offence for which teachers can be prosecuted.

Situations involving awareness or reasonable suspicion of such sexual misconduct must be taken extremely seriously and the teacher and principal involved must ensure that they comply with both the statutory provision and the student protection policy.

Failure to report suspected likely sexual abuse, as required by section 365A, cannot result in prosecution, but can result in disciplinary consequences and should be treated just as seriously as suspected sexual abuse which has occurred or is occurring.

SP1 – report of a minor incident

When a complaint is received that meets established thresholds, it can generally be resolved locally by the relevant workplace manager. If there is enough evidence to support the complaint, the principal has to address any inappropriate behaviour through the informal resolution process, which includes mediation, conciliation or management correction guidance and ongoing training.

The Department believes the following examples to be at a SP1 level:

- minor assault, where any physical injury sustained by a student (such as a minor scratch, bruise or redness of the skin) appears to be insignificant and there is no suggestion of sexual misconduct
- swearing
- aggressiveness.

SP2 – report of an allegation of harm to a student by an employee

SP2 incidents involve allegations of more serious employee conduct involving alleged student harm. When the allegation arises, the manager sends an SP2 form to Intake and Assessment within Integrity and Employee Relations (IER). The unit will then advise the principal/manager of any action required, will assess the allegation and, if necessary, authorise or conduct a managerial enquiry.

If there is enough evidence to support the complaint, the principal has to address any inappropriate behaviour through the informal resolution process, which includes mediation, conciliation or management correction guidance and ongoing training.

Below are some examples that the Department believes to be at a SP2 level:

- physical assault resulting in injury

- repeated minor physical assaults despite managerial correction
- harassment or intimidation of students
- some types of sexual misconduct.

SP3 – report of suspected sexual abuse of a student by an employee

Sexual abuse or suspected sexual abuse of students by workplace employees should be reported immediately through OneSchool. The matter will be immediately reported to the necessary agencies, including Intake and Assessment within Integrity and Employee Relations (IER), Queensland Police Service, and Department of Child Safety.

Incidents can be upgraded or downgraded, depending on the evidence.

The QTU can provide legal assistance in the investigation, discipline and penalty phases of non-minor breaches of Code of Conduct complaints.

If criminal activities are involved, the Intake and Assessment Unit may pass the complaint to the police, who will investigate and deal with the matter.

If contacted by the police, you should get in touch with the Union as a matter of urgency, before giving any statement. Intake and Assessment within Integrity and Employee Relations (IER) will most likely not begin an investigation while the matter is being dealt with by the police.

Under the relevant legislation, the Department must send certain complaints about registered teachers to the Queensland College of Teachers. Depending upon the nature of the complaint, the College may suspend registration until it has completed its investigation.

The Queensland Civil and Administrative Tribunal (QCAT) will consider submissions from the Queensland College of Teachers and, in cases of proven misconduct, impose penalties, which can range from cancellation of registration to imposing a refresher course directed by the College. The Union will assist legally during the College's investigation.

Preparing for an interview

The Department must give 48 hours' notice before it can interview a person under investigation. If more notice is required in order for a QTU officer to be in attendance, the Union will negotiate an appropriate date and time with the investigators directly.

You should receive a letter containing the date, time, name of the investigating officers and the

location of the interview, as well as a broad statement of the allegations. If you are not provided with the allegations in writing prior to the interview, contact the Union.

You can bring a support person to the interview, such as a Union official or Lead Union Representative. This person is only there for support, they cannot answer the questions for you in the interview.

They can, however, request an adjournment to the interview should you need to clarify an issue, and can intervene if they believe the interview is not being conducted in accordance with Department of Education investigation guidelines, the principles of natural justice or the CMC's Facing the Facts guidelines.

Writing a statement

Where appropriate, the Union may advise you to draft a written response to allegations prior to the interview. The draft statement can be looked at by QTU officers and may be provided to the investigators at the interview. If any questions are asked during the interview which relate to its contents, you can refer them back to the document.

Some tips:

- Write nothing until you get advice from the Union.
- Tell the truth.
- Imagine the statement is being read by someone outside of the workplace - give full names, positions, background information.
- Clarify the context, explain the incident in its entirety e.g. what was the activity, preparation, safety measures.
- Distinguish between facts and assumptions or opinions.
- Be clear and concise.
- Do not allow yourself to be rushed into writing a statement - explain that it is important and requires a careful response.
- Don't lie or omit information - if troubled, get advice.
- Be factual, not emotive when describing your actions.
- If you are unable to remember the exact words spoken, use: "I said something to the effect of 'I'm gonna come after you'".
- Do not talk about stress, provocation, health or personal issues until after taking advice.

Think about the wording that you use. For instance, if you led a student from a room and were subsequently accused of physical assault, then use "guided" instead of "grabbed" or "pulled". Also, be clear and detailed in your description of the incident, using phrases such as "I placed my right hand on his left shoulder" or "I placed my fingers around his upper arms".

Emotive language can suggest the teacher lost their temper, which may influence the investigators' opinion of whether the teachers' actions were appropriate.

The interview

Most interviews follow a standard procedure. The interviewers introduce themselves, explain the process and remind you that your support person cannot answer questions for you. Interviews are recorded, and you can request a copy of the recording at the end. This will be provided as a CD in two to three weeks.

The investigators usually begin by asking a series of questions, such as:

- How long have you been a teacher?
- Where have you taught?
- How long have you taught at your present workplace?
- What grades and subjects do you teach?

They ask a series of questions about your training in relation to the Code of Conduct and Student Protection Policy, when you completed this training and your understanding of both of these policies.

The interview will usually take one of two forms:

(a) You are asked to discuss a particular incident, or answer some guided questions.

(b) You undergo a structured interview, with a set of specific questions asked one after the other.

You should answer questions put to you at the interview, as long as they relate to the allegations. If they do not, you are entitled not to answer those questions until you have had sufficient time to consider the new matter.

It is important to answer questions truthfully and precisely, without giving more information than required. Think about your responses and use the same process as you would in writing a statement.

If you cannot answer a question or cannot remember an incident, tell the investigators. If you have evidence to back up your statement, whether a document or a witness, table the document or ask if this person can be

interviewed. If at a later time more information comes to hand, you can submit this supplementary information in writing or by contacting the investigator prior to the report being completed.

Never forget, your first response may be vital – you must be either honest or silent until you obtain advice, and any response should be thought through carefully.

At the end of the interview, the investigators will ask how you feel you were treated.

What happens after the interview?

Generally speaking, the subject officer of the allegation will be the last person interviewed. The investigators will then complete a report and submit it to the director of Intake and Assessment within Integrity and Employee Relations (IER), who will then decide whether to conclude the matter and let you know the process is complete. If the report indicates that there may be a case to answer, the report will be provided to the Workforce Review Unit, which will decide whether disciplinary action should be considered. If you receive a disciplinary letter from the Department asking you to respond officially to some allegations, you should contact the Union for advice and assistance regarding your response.

Concerns over the disciplinary system

Over a number of years, the Union has raised some concerns over the managing of alleged breaches of the Code of Conduct.

- Issues are put forward and investigated which could more appropriately be dealt with at workplace level by the principal/manager. The threshold for investigations dealt with by IER should be set at a higher level, resulting in fewer matters being investigated and a quicker investigative process.
- Not enough time and information is given to the teacher to enable them to adequately prepare for the investigation.
- Suspension without pay during committal proceedings in court, often for an extended period of up to and in excess of a year, can continue through the actual trial. Even if the teacher is found not guilty, they can still be without pay until IER has finalised its investigation.
- The process used to conduct the investigation and the communication methods employed are inadequate. The personnel involved in the investigations

and the methods used have also caused problems.

- The process used by IER in reviewing and deciding outcomes, and the length of time it takes, need to be addressed.
- Recent changes have addressed some of these issues, in particular the allocation of more minor complaints to be dealt with at a school or regional level.
- However, unreasonable delays and issues with investigations into more serious complaints continue and the Union will continue to press for improvements in this area.

The Union continues to lobby to secure improvements in:

- the timeframes associated with the investigation processes of Integrity and Employee Relations (IER)
- the number of unsubstantiated reports which result in investigations by Integrity and Employee Relations (IER)
- communication with our members by Integrity and Employee Relations (IER)
- the investigation process used by Integrity and Employee Relations (IER), so members have access to a fair and reasonable process.

QTU advice and information

Any QTU member involved in a Departmental investigation or subsequent disciplinary process should contact the Union for advice and assistance.