



WHANGANUI HIGH SCHOOL POLICY COMPLAINTS & ASSOCIATED STAFF DISCIPLINE

INTRODUCTION	1	<p>Complaints are school-related grievances raised by any member of the School community or wider community about:</p> <ul style="list-style-type: none"> a) The board of Trustees and/or members of the Board of Trustees. b) The Principal c) Whanganui High School staff d) Whanganui High School students e) Whanganui High School procedures
RATIONALE	1	Complaints need to be dealt with by the most appropriate person in a fair and efficient manner in keeping with School Policy, the Education Act, relevant employment contracts and the New Zealand law.
PURPOSE	1	To ensure there are clear and open procedures relating to complaints that can be followed by any member of the School or wider community.
	2	To ensure that complaints are dealt with at the appropriate level, by appropriate personnel and in the appropriate manner.
	3	Complaints relating to Sexual Harassment should be considered in keeping with the School's Sexual Harassment Policy.
	4	In dealing with complaints, all relevant New Zealand laws and employment contracts must be complied with, including the principles of natural justice.
	5	The Principal is ultimately responsible for all complaints received by the School other than those pertaining to the Board of Trustees which are ultimately the responsibility of the Chairperson of the Board.
GUIDELINES	1	<p>Complaints about the Board, or member of the Board (other than the Principal) –</p> <ul style="list-style-type: none"> a) Need to be addressed (in writing) to the Board Chairperson – either directly or via the Board's Secretary or Principal. If the complaint pertains to the Chairperson, it becomes the responsibility of the Deputy Chairperson to receive the complaint. b) The procedure for investigating and resolving such complaints is attached as <i>Appendix I</i> to this Policy.
	2	<p>Complaints against Whanganui High School Staff –</p> <ul style="list-style-type: none"> a) Are to be addressed to the Principal b) The Principal may ask that the complaint be in writing. <ul style="list-style-type: none"> i) An outline of procedure relating to complaints received about teaching staff is attached as an Appendix II to this Policy. A guide to consequences for staff if complaints are upheld is also provided as an Appendix 3 to this Policy. Further details relevant to procedures in this regard may be obtained from the Principal. c) Complaints against member of the staff, other than teachers, will be dealt with in accordance with their relevant employment contract. d) Complaints against the Principal will be dealt with by the Board Chair and must be in writing as the Principal is a member of the Board. Complaints against the Principal will be dealt with in accordance with the Principal's Employment Contract.
	3	<p>Complaints against Whanganui High School Students –</p> <ul style="list-style-type: none"> i) Are to be addressed to the relevant member of staff and ultimately the Principal. ii) Complaints will be dealt with in accordance with the School's Student Discipline Policy.

	4	Complaints against Whanganui High School Procedures – i) Are to be addressed to the relevant member of staff and ultimately the Principal.
EVALUATION	1	The Board, in association with the Principal, will review this policy on a three-yearly cycle in accordance with the School's quality management cycle.
CONCLUSION	1	The Board and School, through the Principal, needs to ensure that complaints are dealt with fairly and efficiently so as to ensure that the high standards expected of the School and its Staff are maintained.

Approved by the Board
Signed Chairperson:

Date: 21.11.16.

Signed Principal:

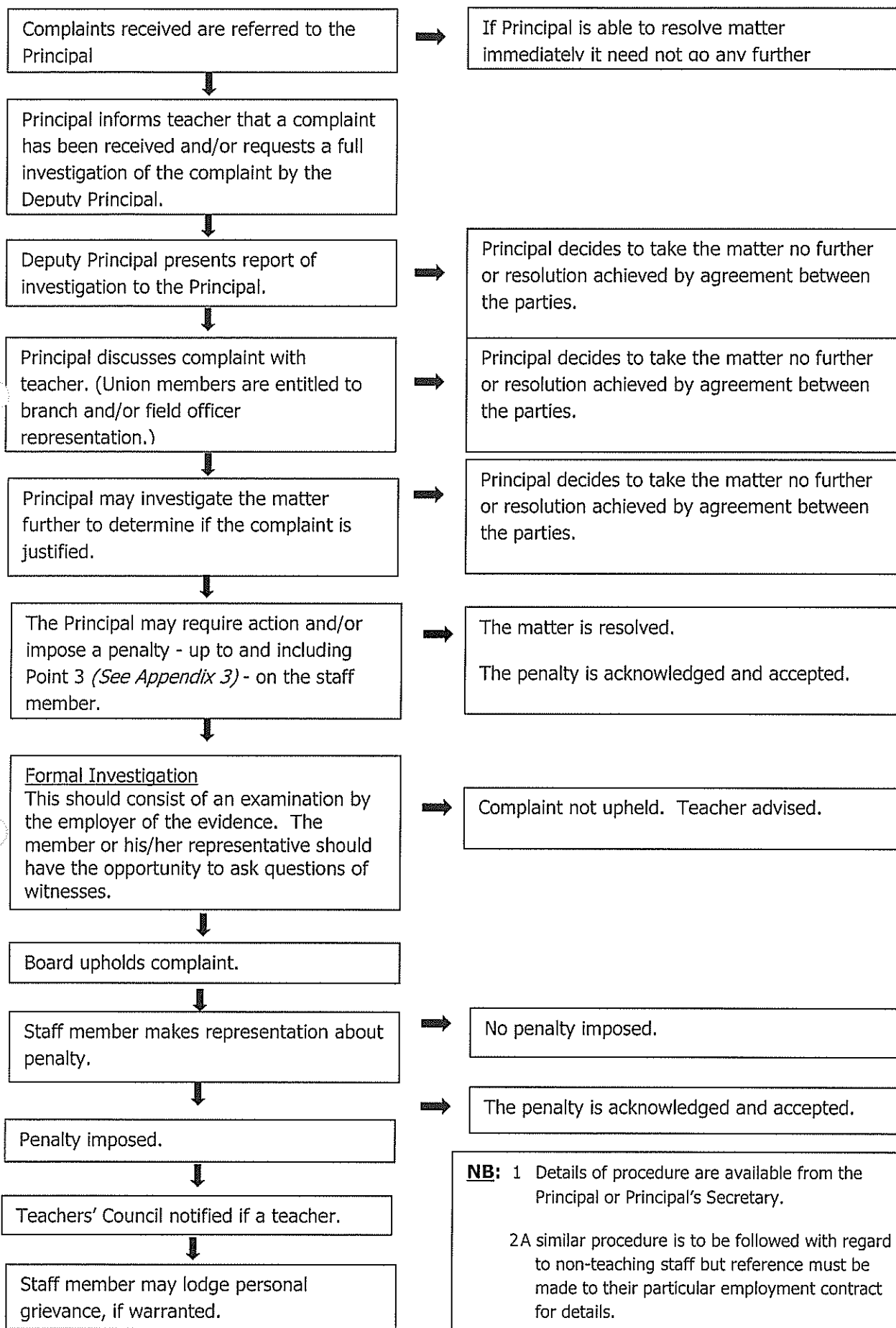
Date: 21/11/16

PROCEDURES RELATING TO COMPLAINTS AGAINST THE BOARD OR ITS MEMBERS

- 1 Complaints may come to the attention of the Board via the Board Secretary, Principal, or any member of the Board and should be addressed to the Board Chair (or Deputy).
- 2 Complainants making a verbal complaint will be informed that their complaint will only be acted upon if the complaint is supported in writing detailing the nature of and particulars of the complaint. Advice should be taken and sought through NZSTA personnel, insurance company and the school's lawyer.
- 3 If the Chairperson (or the Deputy Chairperson) is able to resolve the complaint, the complaint need not be taken to the full Board.
- 4 Where the matter cannot be resolved by the Chairperson, the Chairperson must nominate a committee of not less than three Board members (other than the Chairperson) who will investigate the complaint and report to the Board. If the complaint is against a Board member(s) (other than the Principal), the Board investigation committee may ask the parties to discuss with them the issues (or may accept written submissions) and must report to the Board that either:
 - i) they believe there is no case to answer, or
 - ii) they have been able to resolve the issue, or
 - iii) they have not reached a resolution, in which case they are expected to suggest a course of action to be followed

NB: When considering complaints against the Board of Trustees or a member of the Board of Trustees, consideration should be given to the Education Act, and any other relevant Act of Parliament, and/or the school's policies, and/or the Board's Minutes and normal procedures (standing orders), and/or the Trustees' Code of Conduct, and/or the regulation relating to pecuniary interest and/or conflict of interest. Guidance in these matters may be sought from the School Trustees' Association (STA), the STA Handbook, or the Ministry

DISCIPLINARY PROCEDURE RELEVANT TO STAFF



STAFF DISCIPLINE AND ASSOCIATED PENALTIES

INTRODUCTION

The following provides a guide to the Board, the Principal and Staff in relation to complaints against staff that may result in disciplinary action by the school. The consequences set out below do not provide an exhaustive list, nor should they be read as necessary sequential steps in any response the Principal or Board may make to any given situation requiring disciplinary action. For full details relating to procedure, see the Principal.

Complaints relating to staff performance will be considered by the Principal in line with the relevant collective contract and responded to with reference to the relevant performance criteria. Poor staff performance may lead to action by the Principal in keeping with the attestation requirements, or relevant *competency regulations*.

Consequences for staff, if complaints against staff (other than competency issues) are found to be justified/upheld, include the following:

PENALTIES RELEVANT TO STAFF DISCIPLINARY CONCERNS

1 Verbal Warning

- (a) The Principal shall, in writing, outline the matter(s) of concern to the staff member.
- (b) The staff member shall be given a reasonable period of time to provide an explanation.
- (c) The Principal may need to make further enquiries to clarify the facts of the specific matter(s) causing concern before making a final decision.
- (d) If the Principal is satisfied that the matter(s) of concern are proven, then he/she may issue a verbal warning to the staff member. The verbal warning shall outline the corrective actions required to amend their conduct and the staff member be given a reasonable opportunity to do so. The staff member shall have explained to them the failure to take the corrective actions will result in further disciplinary action being taken.
- (e) The Principal has the discretion to make the verbal warning valid for a period of up to six months.
- (f) The fact that a verbal warning has been given, plus acknowledgement that the process has been followed, is to be recorded, shown to the staff member, signed by them and placed on the staff member's personal file.

2 Written Warning

- (a) Where a verbal warning fails to result in the required improvement, the Principal may wish to proceed with a written warning.
- (b) The Principal shall, in writing, outline the matter(s) of concern to the staff member.
- (c) The staff member shall be given a reasonable period of time to provide an explanation.
- (d) The Principal may need to make further enquiries to clarify the facts of the specific matter(s) causing concern before making a final decision.
- (e) If the Principal is satisfied that the matter(s) of concern are proven, then he/she may issue a written warning to the staff member. The written warning shall outline the corrective action required to amend their conduct and the staff member be given a reasonable opportunity to do so. The staff member shall have explained to them that failure to take the corrective action will result in further disciplinary action being taken.
- (f) The Principal has the discretion to make the written warning valid for a period up to nine months.

(g) The written warning, plus acknowledgement that the process has been followed, is to be recorded, shown to the staff member, signed by the staff member and placed on their personal file.

3 Final Written Warning

(a) Where a written warning fails to result in the required improvement, the Principal may wish to proceed with a final written warning.

(b) This is to follow the procedure of Step Two but the staff member must be specifically advised that continued unsatisfactory behaviour or performance will result in dismissal.

NB: In some circumstances it may be appropriate to move straight to Step Three for misconduct that does not constitute serious misconduct but is of sufficient concern to justify a final written warning. This shall occur with the authorisation of the Board.

4 Disciplinary Procedure before the Board

(a) Where the Principal believes the staff member's behaviour may constitute serious misconduct or a staff member has continued to behave or perform unsatisfactorily, or where the staff member will not accept the decision and/or penalty of the Principal, the matter may be referred to the Board of Trustees. Details of Board hearings may be obtained from the Principal.

5 Serious Misconduct

(a) The Board may dismiss without notice in the case of serious misconduct.

NOTE:

- 1 At any point the staff member concerned may need to be suspended while the complaint is investigated.
- 2 Union members should be advised that they may have union support and representation.
- 3 Current legislation means that the outcome of disciplinary hearings may need to be notified to an outside agency, e.g. Teachers' Council.

DETAILED PROCEDURES FOR DEALING WITH COMPLAINTS AGAINST WHANGANUI HIGH SCHOOL STAFF

INTRODUCTION

- 1 Complaints may be generated by any member of the school or wider community.
- 2 Complaints against members of staff must be brought to the attention of the Principal.
- 3 The Principal may require the complaint to be in writing and dated and signed by the complainant.
- 4 If the Principal believes the complaint relates to staff performance, this may lead to competency issues being raised with the staff member concerned.

PROCEDURE

- 1 Initial complaint and investigation
 - a) A complaint is received and acknowledged in writing by Principal, indicating to the complainant an outline of the process and timeframe.
 - b) If the Principal is able to resolve the matter immediately, it need not be taken any further.
 - c) If not, the Principal will notify the staff member concerned of the complaint and of the process of investigation to be followed. In most circumstances this involves a request that the staff member meets with the Deputy Principal to discuss the complaint, and a request to the Deputy Principal to investigate the matter and report back to the Principal. The staff member may request support and/or union representation.
 - d) The Principal may make significant *other* staff also aware of the complaint, e.g. Head of Department.
 - e) Having received the complaint and discussed the matter with the staff member concerned and/or their union representative, the Principal may:
 - i) Decide to take the matter no further, or decide that the matter is not one of discipline.
 - ii) Resolve the matter with the complainant.
 - iii) Advise the staff member that further action is required and that the matter is, on the evidence presented, a disciplinary matter.
- 2 Further enquiries are required
 - a) If having received the complaint and discussed the matter with the staff member concerned and/or their union representative, the Principal believes further investigation is required. This can be undertaken by the Principal or preferably another suitable senior member of staff.

Following that investigation, the Principal may:

 - i) Decide to take the matter no further, or decide that the matter is not one of discipline.
 - ii) Resolve the matter with the complainant.
 - iii) Decide that the complaint is, in part or full, justified.
- 3 Response if the complaint is justified
 - a) The Principal may do any one or combination of the following:
 - i) Arrange for steps to be taken (which may involve the teacher concerned) that will meet the expectations of the complainant and end the matter.
 - ii) Impose a penalty on the staff member up to and including Point 2 (see Appendix 3 of the school's Complaints and Associated Staff Discipline Policy).
 - iii) Notify the Board Chair of the complaint and the school's response to that point.
 - iv) Refer the matter to the Board Chair with the expectation that a disciplinary hearing will take place.

Note: If the staff member is unwilling to accept the decision of the Principal, he/she may request a disciplinary hearing with the Board.

Formal Hearings

- (a) It is advisable to agree on procedures prior to the Hearing. This includes the composition of the sub-committee (of the Board) conducting the Hearing, which will make any decisions about upholding complaints and penalties. The procedures allow for the possibility of suspending the staff member. Such an action would normally be taken only when deemed to be necessary for the welfare of the students, e.g. when investigating a serious assault, or a complaint involving a sexual matter. Before any decision to suspend a staff member is made, the staff member should be allowed the opportunity to make representations to the Board. *(See Appendix D)*
- (b) The Hearing needs to take place in a venue where there will be no interruptions to the proceedings. It should start early in the day to allow sufficient time to deal with the complaints. It is common for the Hearing to take place on neutral ground.

It is important that:

- i) Those conducting the investigation can be seen to have no conflict of interest, bias or prior knowledge of the matter.
 - ii) There is either a meeting or telephone contact between the members of the Committee prior to the investigation to sort out procedures and to determine which witnesses (if any) to call.
 - iii) Those concerned understand the procedures
 - iv) Care must also be taken to ensure that cultural sensitivities are responded to in hearing evidence from a staff member. It may be appropriate to have whanau present.
- (c) At the beginning of the hearing, the Board sub-committee (hereafter referred to as the Board) and the PPTA should exchange any written statements which will be used in the proceedings. There would then be an adjournment to read the statements. There should be no material about past allegations or offences in the statements.
 - (d) During the hearing, witnesses should be kept separate from each other, particularly if pupils are involved. They would be present in the Hearing only while they are giving evidence.

The complainant and his/her witnesses are generally interviewed first, one after another. This is followed by the accused staff member with his/her representative (usually the field officer). Arrangement should be made so that witnesses are not together prior to their interview.

- (e) At any time during the Hearing, if the Board or the Union so wishes, a brief adjournment may be called.
- (f) The board may seek expert advice – e.g. legal advice or STA advice at any time during the investigation. If the Police are involved, refer to Appendix B.
- (g) For guidelines relating to Gross Misconduct, refer to Appendix C.

Usually, proceedings take place as follows:

- i) The Board sub-committee chairperson reads the charges and explains the general procedures.
 - ii) The Board calls its first witness who may read or recount a statement or be taken through the evidence by questioning.
 - iii) The Union may then question the witness. This procedure is carried out until the Board has called all of its witnesses.
- i) The Union then calls its witnesses in a similar manner.
 - ii) The Board may question each of the witnesses.

Where there are several complaints to be heard, it is suggested that the above procedure be carried out complaint by complaint.

- i) After each complaint, the Union would withdraw and the sub-committee of the Board would uphold or dismiss the complaint.
- ii) If any complaints have been upheld, the Board may raise previous offences of a similar nature committed by the staff member which have been investigated under the Disciplinary Procedures and have been upheld.
- iii) After all of the complaints have been upheld or dismissed, the Union would then make a final summation, including mitigating circumstances and comments on penalties for any complaints which are upheld.
- iv) The Union would withdraw and the sub-committee of the Board would make a decision as to whether or not there should be a penalty, and if so, the nature of the penalty.

The sub-committee would then inform the Union about its decision.

NATURAL JUSTICE IN STAFF MEMBER CONDUCT AND DISCIPLINE

Disciplinary cases against staff members must be conducted according to the principles of natural justice. These principles are based on common sense and fairness.

Natural justice is required to operate and be seen to operate where an individual or a group, such as a Board of Trustees, is deciding issues which affect the rights or interests of an individual. It applies to the process of decision making. It means that in any situation due regard must be had for the interests of both parties without bias.

The fundamental principles of natural justice are:

1 The Rule Against Bias

The rule against bias is formulated as -

- a) An adjudicator must have no financial or property interest in the outcome of the question to be heard; and
- b) The adjudicator must not be reasonably suspected, or show a real likelihood, of bias.

An adjudicator will be disqualified if he/she has such an interest in the matter unless both parties are made aware of the interest involved and waive their rights.

The question of bias must be applied realistically. The question arises, how does the matter look to an outsider? A test which is commonly used is "*would a member of the public, looking at the situation as a whole, reasonably suspect that the adjudicating body was biased?*"

In a legal case, a principal who had made a complaint against a staff member and then sat on the board committee which decided against the staff member, was held to have demonstrated bias. The Court said that the rule against bias meant no one can be judge and jury in their own cause. This is important for principals who are members of Boards of Trustees and are responsible for staff, and may apply to other trustees as well.

2 The Right to a Fair Hearing

A party must be given:

- a) Notice of the case he/she has to meet.
- b) A fair opportunity to answer the case against him/her and to put his/her own case forward.

The adjudicator in hearing a matter must act in good faith and hear both sides of the argument. To enable a fair hearing the parties must have access to all relevant evidence and be given a fair opportunity to answer. Judgements about a staff member's conduct or performance must be made openly and on the basis of agreed criteria.

The burden of proof falls upon the Board of Trustees to show that it has acted without bias and fairly. Note that action by a personal grievance does not prevent civil action for a breach of natural justice.

EFFECTS OF NATURAL JUSTICE AND NON-COMPLIANCE

There are two major effects of the application of natural justice:

- a) It secures better justice;
- b) The decision is likely to be better if the proper procedures are followed.

If the rules of natural justice are breached, an individual can apply to the High Court for an order to have the decision reviewed or set aside.

As statutory public bodies, Boards of Trustees are expected by the courts to know and apply the principles of natural justice rigorously.

COMPLAINTS REFERRED TO POLICE

- 1 Occasionally a complaint which comes to the school may also be brought to the attention of the Police. Under such circumstances a board is not debarred from acting upon the information it has as different jurisdictions apply.
- 2 Natural justice requires the complaint to be considered as soon after the event as is possible. Therefore, in most cases an initial investigation should be carried out. This must be as thorough as is reasonably practicable given the circumstances. The allegations must be put to the staff member and they must be afforded such opportunity as is reasonably practicable in the circumstances to respond. A decision must then be made as to whether to take the matter any further at that stage.
- 3 If the board believes it has not been able to make as thorough an investigation as it would have liked because of the circumstances, this should be stated. The board could also indicate that a full hearing will take place once the police have concluded their investigation or any court proceedings which may follow.
- 4 The board **must not** rely on the Police's (or the Court's) findings. It must make its own determinations.
- 5 If it is a criminal matter, the standard of proof is beyond reasonable doubt. Whereas for a disciplinary matter the standard of proof is the balance of probabilities. Also the charges/allegations will be different, i.e. the Police charge might be possession of heroin, whereas the disciplinary charge faced by the staff member might be conduct unbecoming to a staff member.
- 6 These comments are also relevant to suspensions. If the Board has suspended a staff member as a result of a criminal incident, even if the staff member is acquitted, the board must carry out its own enquiries and satisfy itself there was no substance to the matter before lifting the suspension. Upon lifting a suspension, if the staff member was suspended without pay, he or she must be reimbursed for loss of that salary.
- 7 Under the contract, the board has to make the decisions, not anyone else. Ultimately it is the Board as the employer which is responsible and answerable for its actions.

SERIOUS MISCONDUCT

- 1 The Principal, in conjunction with the Board of Trustees, will decide what constitutes serious misconduct.
- 2 Guidelines to what constitutes serious misconduct are set out below, but these matters **do not** provide an exhaustive list of what constitutes serious misconduct.
- 3 Each case will be judged on its merits.

Examples may include:

- a) theft and/or deliberate misuse or unauthorised use of school/board property or equipment;
- b) fraud;
- c) fighting and/or assault;
- d) refusal to obey a lawful instruction;
- e) bringing non-prescription drugs or alcohol to work and/or consuming/using them while at work;
- f) drunkenness;
- g) lying or providing false information;
- h) undermining Board policy or the integrity of the Board;
- i) conduct likely to prove a serious, injurious example to others such as sexual misconduct involving students;
- j) others as they may arise.

SUSPENSION OF AN EMPLOYEE

- 1 Staff members' employment contracts generally provide that where alleged misconduct is deemed sufficiently serious, an employee may be suspended with or without pay or be temporarily transferred to other duties.
- 2 However, should a question of possible suspension or transfer arise, it is critical the board consider the specific suspension or transfer provisions (if any) of the relevant employment contract to clearly identify the basis (if any) on which suspension/transfer can take place.
- 3 The seriousness of the alleged misconduct must be considered by the Board.
- 4 What may constitute "*sufficiently serious*" misconduct is not defined. However, it is suggested the following points are relevant in considering the matter:
 - a) the continued presence of the employee constitutes a real physical threat to staff or students in the school;
 - b) the continued presence of the employee in the classroom is inappropriate (the alleged conduct may have involved one or more of the staff member's students) and there are no practical alternatives to suspension;
 - c) the continued presence of the employee in the school would lead to serious concern amongst the community as to the safety and well-being of students;
 - d) the continued presence of the employee in the school environment is a real threat to the orderly running of the school;
 - e) the continued presence of the employee is jeopardising the necessity of maintaining (or being seen to maintain) the professional standards/role model of a staff member.
- 5 Suspension or transfer of an employee is not to be taken lightly. Genuine concerns must exist if suspension or transfer is to be considered. If not, then suspension or transfer is effectively being used as punishment rather than as a means to temporarily remove an employee out of the classroom or school environment for one or more of the above reasons.
- 6 As suspensions or transfer to other duties is only part of a disciplinary process, it should not be used for punishment purposes.
- 7 Some employment contracts provide for a consultation process to occur prior to suspension. Even where an employment contract does not provide for consultation on the issue of suspension, case law suggests that there must still be adequate procedural steps taken in such a situation. These steps include giving the employee concerned the opportunity to address the question of whether or not they should be suspended.
- 8 Unless there are exceptional circumstances, e.g.: it has not been possible to contact the person or the nature of the allegation is such that quick action is required, a decision to suspend without previously notifying the employee and providing an opportunity for comment will be seen as unfair.
- 9 Employment contracts provide that suspension can be with or without pay. Because suspension is not a "*punishment*" but rather a "*marking time while allegations are dealt with*" situation, any suspension would normally be on pay. It is strongly recommended that suspension without pay not be considered unless the board has sought professional advice.
- 10 Suspension of any type must be for a good cause, if claims of prejudgement are to be avoided. It is strongly recommended that boards seek advice from their local NZSTA adviser: Personnel/Industrial Relations should the issue arise.