ALLEGATIONS OF MISCONDUCT AGAINST EMPLOYEES
Policy & Procedures

Next review date: Currently under review
Last reviewed: June 2013
By: Principal, Dean of Curriculum

Acknowledgment
These Guidelines have been adapted from those developed by the Anglican Schools Commission

PURPOSE AND PRINCIPLES

Purpose

This document provides advice on the policy and procedures to be followed by St Mary's Anglican Girls' School in response to allegations of misconduct made against persons employed in the school.

The policy and procedures apply to all persons employed at St Mary's Anglican Girls' School and not only to teachers. They encompass allegations of misconduct involving students in St Mary's Anglican Girls' School and others.

The policy is not limited to alleged offences or actions occurring within school hours or on school property, but extends to include misconduct by employees generally where it affects their ability to effectively carry out their duties in the school.

These policies and procedures acknowledge both the special responsibility of school employees towards the children in their care and the importance of respecting the dignity of employees and their civil rights.

Principles

The following principles underlie the policy and procedures:

- All adults have a responsibility to care for children, to protect their welfare, and to protect them from abuse.
- All children have the right to an education in personal safety, including safety in relationships.
- All employees have the right to a healthy, safe work environment, and to be protected from abuse within the school and from the public at large.
- The employer is responsible for the management of staff under his/her control and to investigate adequately allegations of misconduct made against school employees.
- Allegations against staff should be dealt with promptly and with due regard for the rights of the staff member concerned, and the reputation of the school.
- While the possibility of a malicious, false or exaggerated allegation is acknowledged, the employer has no choice but to investigate promptly and objectively all allegations of misconduct and to refer matters, where appropriate, to the appropriate civil and legal authorities.
- Where allegations of misconduct relate to students of the school or other minors, the employer has a particular duty of care and a responsibility to deal with the allegations in a way designed to ensure that harm to the child(ren) is minimised. To this end, confidentiality should be observed where possible and appropriate.
• The employer will ensure that adequate support, counselling and assistance is offered to employees and/or students as appropriate.

• Prior to taking action, the Principal should consult with the Chairman of the Board of Governors and other appropriately qualified persons.

The Rights of the Employee

Employees against whom allegations are made are entitled to all reasonable care and consideration, due process and the presumption of innocence. Human beings do make mistakes and errors of judgement, which they regret; they do show remorse and seek forgiveness, and they do repent.

Without condoning or excusing misconduct, it is appropriate to offer Christian love and support for those accused of inappropriate and illegal conduct, and to show compassion to them.

Accordingly, employees against whom allegations are made should be made aware of their rights, and should be assured of their entitlement to procedural fairness and due process. Where appropriate, they should be encouraged to seek legal and other expert advice.

The identity of the alleged victim and the alleged perpetrator, and the nature of the alleged offence should not be made public by the school authorities. An employee against whom an allegation is made should be advised as soon as possible of the nature of the allegation by the appropriate authorities.

DEFINITIONS AND PROCEDURES

Person Employed by the School

Includes: Persons employed by the school, regardless of position occupied, hours of duty or whether employed full-time, part-time, casually or sessionally.

Excludes: Independent contractors who may provide tuition or other services for remuneration but who are self-employed. Persons employed by others. Volunteers, helpers, coaches, tutors and the like.

Note: If an allegation is made against someone who is involved with the school but is not employed by the school, the matter is to be referred to the Police Service and Department of Child Protection as appropriate.

Termination of the school’s association or relationship with persons who are not employees is a matter for the Principal or another authorised person.

Serious Misconduct

“Misconduct” is defined as behaviour or conduct of a member of staff which, in the Principal’s opinion, may adversely affect their ability to carry out effectively their duties in the school and/or which is likely to bring the school into disrepute.

“Misconduct” is behaviour or conduct, which does not meet the definition of “serious misconduct”.

The term “serious misconduct” is defined as unlawful and/or improper conduct by an employee of such a serious nature that after due process accorded to the staff member concerned his/her contract of employment may be terminated summarily.
The following examples of serious misconduct are illustrative only and are not meant to be exhaustive:

- Criminal charges have been laid which, upon conviction, may result in more than 12 months’ imprisonment.
- Sexual abuse, including sexual touching either over or under clothing; oral sex; sexual penetration; possession of films, photographs, electronic material or videos of children involved in sexual activity; or physical intimacy associated with suggestions of a sexual nature.
- Sharing or disclosing printed or electronic material with explicit sexual images and/or references.
- Physical abuse including action by the employee causing physical injury or harm to another, or the use of corporal punishment.
- Emotional abuse, behaviour or demeanour by the employee towards another which is calculated to cause them emotional or social harm or which is likely to delay or impair their physical, social, emotional or intellectual development, including terrorising, isolating or constant belittling of another.
- Repetition of acts of misconduct making evident a wilful intention by a staff member to repudiate his/her contract of employment.

**Allegation**

An allegation may be defined as:

(a) information received from a third party that misconduct may have occurred;
(b) observation of events which suggest that misconduct may have occurred; or
(c) direct disclosure from an individual that indicates misconduct may have occurred.

**Procedures following Allegation**

A person to whom an allegation is made should document the allegation and their response. Where the person to whom an allegation is made is not the Principal of the school, the matter should be reported to the Principal (or in the event the Principal is absent or that the allegation involves the Principal, to the next most senior available member of staff).

In the case of an allegation as defined above, the third party should be requested to write a statement. In the case of (b) or (c) above, the person to whom the allegation is made should write and date the statement him/herself.

Should the allegation take the form of a disclosure from a child, the child should be advised that he/she has been heard and that only those who must know about the allegation will be advised of it. The child should also be advised that he/she will be supported and protected while the allegation is being investigated and, if proven, continue to be supported and protected. The child should be told that he/she has done the right thing in bringing the allegation to someone in authority.

Those to whom the allegation is made should observe confidentiality throughout, ensuring that there is no broadening of discussion about the allegation, other than to those to whom information is required to be given officially.

The Principal should document the details of any allegation of misconduct as reported to him/her, where possible prior to discussion with relevant authorities.

The outcome of any subsequent investigation of an allegation is to be recorded and placed on top of the file established in relation to the matter, including outcomes which establish that the allegation was unfounded, malicious or vexatious.
**Action where Misconduct or Serious Misconduct has Occurred**

Where the Principal forms the opinion after due consideration that an employee’s conduct or action constitutes misconduct, he/she has available a range of measures including counselling, formal warnings, ongoing review, demotion, dismissal or termination as per the relevant Award.

Where the Principal forms the opinion after due consideration that an employee’s conduct or action constitutes serious misconduct, summary dismissal or termination according to the provisions of the relevant Award may result.
ALLEGATIONS AGAINST EMPLOYEES OF BEHAVIOUR OF A SEXUAL NATURE

Acknowledgment
The following policy and procedures follow closely those of the Education Department of Western Australia.

Definition
School employees are in a position of special trust and authority with respect to children. It is unacceptable and illegal for an employee to have any form of sexual contact with a student. Behaviour of a sexual nature encompasses kissing, fondling, encouraging sexual touching, oral sex, penetration of any kind, and photographing or possession of films, photographs, or videos of children involved in sexual activity.

Legal Considerations
According to the Criminal Code, a child is not able to give consent to any activity of a sexual nature in any relationship involving an adult.

The Criminal Code defines a child as:

(a) any boy or girl under the age of 18 years; and
(b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years.

The Criminal Code provides severe penalties for sexual offences against children under the age of 16 years.

In relation to children between the ages of 16 and 18 years, it is a criminal offence under Section 322 of the Criminal Code (Acts Amendment: Sexual Offences’ Act 1992) for a person in authority to have a sexual relationship with a person under 18 years of age.

The law does not allow for the age of consent of 16 years to be a reasonable excuse when the person is in authority in regard to a child.

Under the terms of this policy, St Mary's Anglican Girls' School will regard it as serious misconduct for an employee to have a sexual relationship with a student over the age of 18 years when they are in a position of authority to the student.

From January 2009 it has become mandatory for teachers to report reasonable beliefs about child sexual abuse.

Procedures
When an allegation of behaviour of a sexual nature involving a child, or a student over whom they are in a position of authority, is made against an employee of St Mary's Anglican Girls' School, or there is a strong suspicion that sexual contact has occurred the following procedures will apply:

(a) If the person who receives or makes the allegation is not a teacher he/she will advise the Principal of the School where the person is employed. If the allegation is against the Principal, the Chairman of the Board of Governors is advised and will take over report responsibilities.
(b) If the person who receives or makes the allegation is a teacher at the school, he/she will make a report to the Department of Child Protection Mandatory Reporting Centre. The teacher may also involve the Principal in prior discussions.

(c) If the allegations are against the Principal, the teacher advises the Chairman of the Board of Governors prior to a report being made to the Police Service and the Department of Child Protection Mandatory Reporting Service.

(d) On receipt of an allegation from a person other than a teacher, the Principal contacts the Department of Child Protection Mandatory Reporting Centre. The Police Child Abuse Unit (telephone 08 9492 5444) should also be contacted.

(e) The Principal must report the matter to the Chairman of the Board of Governors.

(f) If after consultation with the Police Child Abuse Unit, the Principal is satisfied that there are reasonable grounds to support the allegation, the Principal reports the matter to the Chairman of the Board of Governors and the employee is removed from all contact with students. If the employee is suspended from duty, he/she will usually remain on full pay unless summarily dismissed.

(g) The Principal will then seek advice, usually from the Police and/or the Department of Child Protection on the appropriate action to take in respect of the alleged offender, the child, and the child’s parent(s)/guardian(s).

(h) The Principal will make a written report on all aspects of the matter as soon as possible and shall keep a written diary of subsequent events and actions.

(i) It is the responsibility of the Police Service and the Department of Child Protection to notify the child’s parent(s)/guardian(s) of the allegation and any proposed police action.

(j) Where it appears that more than one child may have been the subject of abuse, coordinated action must be taken at the school level.

(k) If the alleged abuser is the Principal, the Chairman of the Board of Governors shall undertake the steps outlined.

Note: To ensure natural justice for both alleged offender and alleged victim, it is essential that confidentiality is maintained by all parties concerned, from the time an allegation is made.

CHARGING AND JUDICIAL PROCESSES

The Employee is charged

(a) An employee may be charged by arrest or by summons.

(b) An employee should advise the employer of the nature of the charge and the date of the first court appearance.

(c) On receipt of information that an employee has been charged, the Principal is required to make a judgment about whether or not to suspend from duty or dismiss the employee.

(d) Unless summarily dismissed (see earlier procedure and the provisions of the Award) an employee usually remains on full pay, unless there are exceptional circumstances, in which case the Chairman of the Board of Governors must be consulted.

Where an employee is suspended, with or without pay, it is appropriate to undertake a periodic review of the situation to determine whether events have occurred which may lead the Principal to vary his original decision in relation to suspension.

Where an employee is charged by police, the police may wish to interview students at the school.

Acquittal by a Court

A person who has been charged may be acquitted in one of three ways:
(a) by the decision of a magistrate, judge or jury that they are not guilty;
(b) by the decision of a court that there is no case to answer; or
(c) by the decision of the Prosecution to withdraw the charges against the person.

Ordinarily, an employee acquitted by a court will resume their normal duties in their normal position. However, the decision of a court to acquit an employee charged with a criminal offence may not necessarily result in his/her employment resuming.

In such an event, responsibility lies with the employer to examine the situation thoroughly and to determine whether it is appropriate in the circumstances for the employee to resume his/her normal duties.

In criminal proceedings, the burden of proof is “beyond any reasonable doubt” whereas in employment law, the burden of proof is “on the balance of probabilities”, ie the civil standard of proof.

The Principal is entitled to satisfy himself that an employee is a fit and proper person to perform their duties. Thus, the Principal may conclude that the employee’s services should be terminated or that the employee should not be reinstated (notwithstanding his/her acquittal) taking into account all the circumstances, including the likely effect on the employee.

In such a situation, prior to taking action to terminate or not reinstate an employee, the Principal will consult with the Chairman of the Board of Governors.

Conviction by a Court

A conviction in a court on a matter within the definition of “serious misconduct” will result in the summary dismissal of the employee.

Where an employee is convicted of an offence which does not fall within the definition of “serious misconduct”, the conviction may still result in the dismissal of the employee. Please refer to the section on “Acquittal by a Court” paragraph four and five in relation to the responsibilities of the Principal to satisfy himself that an employee is a fit and proper person to perform their duties.

Where a charge is found to be proven but there is no conviction, ie where the court exercises its discretion not to record a conviction (the term “dismissed” or “no penalty” or “spent conviction order” may be used by the court in these cases), the Principal will take that decision into account in deciding whether dismissal, termination or reinstatement is appropriate.

TERMINATION

Where the Principal has determined that termination of an employee’s service is appropriate, the procedures to be followed are laid down in the relevant Award.

If the Principal is uncertain of the procedure to follow or it is not clearly stated in the relevant award, the Principal is to consult the Chairman of the Board of Governors.

A more detailed Complaints Procedure for staff is available on the staff section of the school’s document server.