

Investigate a Formal Complaint or Serious Allegation

The principal, board chair, or deputy chair will check that your complaint has come to the correct person and then send you an acknowledgement of receipt, usually within a week. You may be asked for further details about your complaint, to assist in determining the appropriate investigation process.

Depending on the nature of the complaint, the preliminary steps may include:

- asking you for more details about your concerns so that they can be properly investigated
- referring you back to the person or people you have complained about to explore options for informal resolution
- referring the matter to the board for consideration at an in-committee meeting, so that the board can determine the next steps
- taking appropriate advice from advisors such as NZSTA.

Not all complaints require an investigation but all written complaints will be disclosed to the person concerned at the earliest opportunity, either as part of a preliminary or informal process or together with an explanation of the process for investigation and resolution of the complaint.

- If your formal complaint **does not** justify a formal investigation, the principal or board will consider the issues raised and all of the relevant information, and provide you with a written response.
- If your formal complaint **does** justify a formal investigation, then subject to the privacy of the person or people concerned, we will keep you informed about the investigation process and the expected timeframes, and will provide you with written confirmation when the matter is concluded.

Relevant collective employment agreement provisions for dealing with complaints about staff members must be observed, including protecting the staff member's dignity and mana, advising them of their right to seek support and representation before responding to complaints, and giving them a reasonable opportunity to take that advice.

The NZ School Trustees Association (NZSTA) or legal counsel should be contacted for advice before proceeding to investigate. The school's insurer should be notified early in the process and kept informed of progress. Consult with external agencies as appropriate (e.g. Oranga Tamariki – Ministry for Children, and/or police) to ensure any actions do not undermine other investigations.

The Employment Relations Act provides for confidential resolution of employment disputes in certain circumstances, the terms of which are usually recorded in a **settlement agreement**.

The school will not include in any settlement agreements any terms which would be inconsistent with the school's statutory obligations, including the Teaching Council's mandatory reporting requirements, or when they would be contrary to a culture of child protection, such as when the conduct at issue concerns the safety or wellbeing of a child.

Board members with a potential conflict of interest will not take part in the investigation. If the complaint is against the principal or the principal has had significant involvement in the alleged events giving rise to the complaint, the principal will not take part in the investigation process.

The following general guidelines will assist in conducting an investigation. They are directed at complaints made against staff members, but can be adapted as appropriate to apply to any complaints about students, parents, the principal, board member, or any other person, and to reflect the nature of the matters under investigation.

Responsibility

Action

Principal and/or chair of the board of trustees

1. Conduct a preliminary assessment of the complaint, which may include hearing from the party complained of, and determining whether a formal and/or informal investigation is appropriate.

If the complaint is serious and relates to matters which could justify the staff member's suspension, take advice from NZSTA or the school's lawyer and follow the contractual suspension process.

Determine the scope of the investigation, and level of board involvement (if any).

If the principal will not be responsible for investigating the complaint, consider appointing a board member or board subcommittee to investigate the complaint and determine the facts; and whether to delegate (by board resolution) the responsibility to make decisions as to the outcome to that board member or subcommittee.

Consider, depending on the seriousness of the issue or any potential conflicts of interest, whether an independent or specialist investigator should be appointed to make preliminary fact findings for the board's consideration.

Consider carefully if any investigator or other person involved in the investigation or decision making (including any staff member or student representative) has a potential conflict of interest or potential for bias. Consider and decide how to best manage or mitigate that conflict or potential for bias, including where necessary removal from the investigation or decision-making process.

Note that the board cannot delegate decision-making responsibility to non-board members. It is prudent to provide the investigator with clear terms of reference including that you are not looking for any recommendations on what you have to do next, just fact-finding, including, on the balance of probabilities, the investigator's view of disputed factual issues. Be aware of school policy and legislative requirements, including that if the complaint involves a child, permission to interview the child must be obtained and consideration should be given to appointing an investigator with some expertise in interviewing children and young people.

2. Inform the school's insurance company of the complaint and steps taken to resolve it. This is a strict

insurance policy requirement to maintain cover in any matter that might involve a claim on the school's insurance. The school's insurers will usually require boards to follow advice from NZSTA or the school's lawyer in dealing with any matters which could lead to disciplinary action against a staff member.

3. Inform the staff member involved that an investigation is planned, and the scope of the investigation. Include, if applicable, the identity of any independent investigator, and confirm (in writing) that they are entitled to seek union or legal advice and representation. Remind them that they may also bring a support person or whānau member to any meeting. Consider the vulnerability of a person subject to a complaint and offer them practical support.

Continue to ensure the complainant is kept informed of progress in the process, without disclosing any details or findings.

4. Provide the staff member complained about with a letter explaining the specific concerns, attaching all of the relevant information, and outlining any potential disciplinary outcome. Give the staff member a reasonable opportunity to consider the allegations and take independent advice before they provide their written and/or oral response to the complaint.

Seek NZSTA or legal advice in preparing your correspondence with the staff member and about running any meetings.

Investigator/investigating committee

5. Complete and take comprehensive notes on relevant inquiries and interviews. Meeting and interview notes should be provided to the interviewee for their comment and confirmation. Note that taping of meetings and interviews is permitted, provided you advise the other party of your intention to do so and make a copy available to them.

Be aware that employees are entitled to copies of all information relating to them personally. Seek legal advice if unsure about the disclosure of information, or contact the Privacy Commission or Ombudsman's Office.

6. Make detailed notes of all discussions, interviews, questions, and answers. The notes should record the facts related to the investigation rather than opinions or comments which could be taken to suggest the outcome had been predetermined. Disclose the notes to the other party.

7. Consider the staff member's responses and all other relevant information, reach a determination on the balance of probabilities about any disputed facts, and decide whether or not the complaint has been substantiated.

Prepare a draft report for the staff member's comment if required to do so by the terms of reference, and then finalise the investigation report.

Investigator

8. Brief the board in-committee on the scope and outcome of the investigation and its findings.

(if they do not have delegated authority to make the decision as to outcome)

Decision maker
(board investigator or sub-committee, the full board, or the principal)

9. Determine any next steps including whether any disciplinary action may be appropriate.

Provide the staff member with a copy of the investigation report and a letter either concluding the process or explaining the next steps, including identifying the specific concerns, and the options being considered with regard to any proposed disciplinary

action together with the reasons those options may be appropriate in the circumstances. Invite the staff member (through their representative if applicable) to respond at a meeting and/or in writing to the report's findings and to the specific concerns, and to comment on any disciplinary options being considered.

If a meeting is held, ask any relevant questions but confine them to issues already identified. This is not an opportunity for either party to raise any new matters. Appoint a good note taker.

10. Following the meeting, or on receipt of the staff member's written response, consider whether any further investigation may be required, then make your decision as to factual matters (recording how you arrived at the decision) and the reasons for any disciplinary consequences.

Depending upon the seriousness of the situation you may need to take a day or two to consider all of the relevant information before making a final decision.

Inform the staff member of the decision. If this is done at a meeting rather than by letter it must be confirmed in writing.

Investigator (if they have the delegated authority to make the decision as to outcome)

11. Report to the board in-committee.

Principal and/or chair of the board of trustees

12. Report back to the complainant(s), reassuring them as far as possible while considering confidentiality and any requirements of collective agreements, of the steps undertaken to resolve their concern, and facilitate any further steps which may be required to provide satisfactory closure.

Ensure ongoing support for the complainant and the person being complained about during and after the investigation. If the complainant is not satisfied, the board chair should advise the complainant of further avenues, e.g. Human Rights Commission, Ombudsman, Ministry of Education, ERO, Privacy Commissioner.

13. File in a register of complaints and concerns about in and out of school behaviour and keep for 'in-committee'. Hold all recorded minutes securely.
14. Determine whether a report needs to be made to the **Teaching Council**, in compliance with the mandatory reporting requirements.