



CATHOLIC EDUCATION
COMMISSION OF WESTERN AUSTRALIA

Topic:	Unsatisfactory Performance or Misconduct
Policy No:	2-C8
Policy Area:	Stewardship
Standing Committee:	School Personnel Committee
Originally Released:	1992
Date for Review:	2018

1. Rationale

The Catholic Church has consistently advocated that work is one of the keys to building a just society (Rerum Novarum 1891, Centesimus Annus 1991). This is why the right to work has been central to the Church's teachings on social justice.

The right to work brings with it the responsibility to fulfil the employment contract by performing with due care and diligence the legitimate requirements of the job. Accordingly, the right to work is balanced by the requirement of a staff member to properly perform the duties of the position.

2. Definitions

2.1 Unsatisfactory performance is established in circumstances where the performance standards expected of a staff member are reasonable and the staff member has consistently or grossly failed to meet those standards. Examples of unsatisfactory performance include an inability to undertake tasks, functions and duties appropriate to the position occupied, including but not limited to the following:

- to promote the mission of the school
- to communicate subject matter effectively
- to meet the education standards of the school
- to treat all with dignity and respect
- to maintain an effective learning environment
- to maintain discipline
- to adequately perform assigned duties

2.2 Misconduct includes but is not limited to the following:

- wilful acts or omissions
- failure to comply with the Code of Ethical Conduct
- refusal to obey a reasonable lawful direction and/or to abide by Catholic Education Commission of Western Australia and school policies/legislation
- neglect of duties, provided neglect occurs with sufficient regularity and is of a sufficiently serious nature
- alcohol and/or other substance abuse impacting negatively on work performance
- physical/verbal/emotional abuse

2.3 Serious misconduct is established in circumstances where a staff member engages in wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment or conduct that causes serious and imminent risk to the health or safety of a person or the reputation of the Catholic school. Examples of serious misconduct includes but is not limited to the following:

- engaging in theft, fraud or assault in the course of employment
- being intoxicated at work due to alcohol use or under the influence of drugs
- refusing to carry out a lawful and reasonable instruction that is consistent with the

- employee's contract of employment
- failure to comply with the Code of Ethical Conduct

3. Scope

This policy applies to all Catholic schools in Western Australia.

4. Principles

- 4.1 All Catholic schools in Western Australia have a legal and ethical responsibility to ensure that a staff member's employment is terminated for a valid reason. Steps must be taken to ensure procedural fairness to minimise the risk of a claim by the staff member for harsh, oppressive or unfair dismissal from employment.
- 4.2 On the basis of sound evidence and with the full knowledge of the staff member involved, the principal has a duty and the authority to take formal action which may lead to the termination of the services of a staff member.
- 4.3 Any action leading to the termination of employment shall reflect current legislative and relevant Enterprise Bargaining Agreement termination provisions.
- 4.4 The parties shall observe strict confidentiality at all times.
- 4.5 The staff member must be given the opportunity to have a representative, such as a union officer, present to provide support throughout this process.
- 4.6 Termination may be on the basis of unsatisfactory performance, misconduct or serious misconduct depending on the situation.
- 4.7 **Unsatisfactory Performance**
- 4.7.1 Formal action would normally follow a period of assistance and support for the staff member.
- 4.7.2 Where such assistance and support is required, the principal shall act in a constructive and positive manner, with clear communication and appropriate record keeping.
- 4.7.3 If formal steps are deemed to be required due to a staff member's unsatisfactory performance, the principal shall initiate a summative appraisal.
- 4.8 **Misconduct and Serious Misconduct**
- 4.8.1 Misconduct occurs when the conduct of a staff member is such that it requires immediate action, such as counselling and assistance, and in some situations serious misconduct may result in termination of the contract of employment.
- 4.8.2 A principal may dismiss summarily only for serious misconduct where the misconduct is of such a serious nature in accordance with the definition that it would be unreasonable for the school to continue the employment of the staff member.

5. Procedures

- 5.1 **Unsatisfactory Performance**
- 5.1.1 Where the principal is of the opinion that a staff member may not be performing to a satisfactory standard in accordance with the definition, the staff member shall be advised in writing and given the reasons for this opinion.

- 5.1.2 The principal shall undertake a proper and prompt review of the alleged unsatisfactory performance to determine if there is evidence to substantiate the allegation.
- 5.1.3 Where the finding of the review undertaken by the principal indicates that unsatisfactory performance exists, the staff member shall be advised in writing of the specific areas of concern requiring improvement.
- 5.1.4 The principal shall provide assistance and a period of time to allow the staff member to redress the identified areas of alleged unsatisfactory performance. This should include offering the staff member information about accessing counseling through the Employee Assistance Program if required.
- 5.1.5 If, in the judgement of the principal the staff member has not made the necessary performance improvements and following consultation with the Catholic Education Office Employment and Community Relations Team, he or she shall be informed in writing that:
- a decision has been made to proceed with the formal summative appraisal process which may lead to dismissal
 - the form and conduct of the appraisal is to be determined by the principal with advice from the Catholic Education Office Employment and Community Relations Team
 - the staff member shall be given the opportunity to respond and raise any matter which the staff member wishes the principal to take into account in reaching a decision

A copy of the letter shall be forwarded to the Congregational Leader or Governing Authority where applicable.

Please Note: For teaching staff the summative appraisal process is detailed in the Western Australian Catholic Schools Enterprise Bargaining Agreement.

- 5.1.6 In the process of summative appraisal, in addition to the principal (who has prime responsibility), participation may also include a nominee of the staff member concerned and any other nominee as deemed appropriate by the principal.
- 5.1.7 If the summative appraisal establishes that a staff member's performance is unsatisfactory, the staff member shall be advised of the findings of the summative appraisal and be given the opportunity to respond to the findings of the appraisal.

After considering the staff member's response, the principal, in conjunction with the Catholic Education Office Employment and Community Relations Team, shall determine the appropriate action to be taken.

- 5.1.8 Where it is determined that the staff member cannot remain on staff due to unsatisfactory performance, the staff member shall be provided with a letter of dismissal by the principal.
- 5.1.9 Dismissal of staff shall be with notice or with pay in lieu of notice in accordance with the relevant provisions of the applicable Enterprise Bargaining Agreement.

5.2 Misconduct/Serious Misconduct

- 5.2.1 Where the principal believes (following consultation with the Catholic Education Office Employment and Community Relations Team) that a staff member's conduct or behaviour requires immediate formal corrective action, this action may be by way of counselling and warning in the event of misconduct or immediate suspension of employment in the event of serious misconduct.

- 5.2.2 The staff member shall be advised of the allegation(s) in writing by the principal.

- 5.2.3 An investigation of the circumstances surrounding the misconduct shall be carried out. The form and conduct of the investigation shall be determined by the principal in conjunction with the Catholic Education Office Employment and Community Relations Team. The format of the investigation shall be provided to the staff member at the time the staff member is given written details of the allegation(s). A flowchart of the preferred format appears at Attachment One.
- 5.2.4 Where the investigation determines that misconduct has occurred and disciplinary action is required, other than termination of employment, the staff member shall be offered reasonable assistance and time to redress the problem in the form of a written warning (see page 6). If the investigation finds that serious misconduct has occurred then consideration shall be given to an immediate termination of employment (summary dismissal). During this process the principal shall discuss with the Catholic Education Office Employment and Community Relations Team appropriate actions to be taken.
- 5.2.5 In certain situations, after consultation with the Catholic Education Office Employment and Community Relations Team, a staff member may be suspended from duty on full pay whilst an investigation is being undertaken.
- 5.2.6 At the conclusion of an investigation and prior to any action being taken, the staff member shall be advised of the findings and offered the opportunity to respond. The staff member's response shall be considered when determining the appropriate action.
- 5.2.7 If after considering the staff member's response and the findings of the investigation, the principal is of the opinion that the staff member is guilty of misconduct or serious misconduct, the principal shall present a letter of dismissal to the staff member outlining the reasons for termination. A copy of the letter shall be forwarded to the Executive Director and the Congregational Leader or Governing Authority where applicable.

Notice Periods

While Enterprise Bargaining Agreements in Catholic schools have varying notice periods, changes to Federal and State legislation may also impact on the prescribed period of notice to be applied. Consultation with the Employment and Community Relations Team shall be undertaken to determine the correct notice period.

- 5.3 In the event the principal has reason to believe that a teacher is guilty of unsatisfactory performance, misconduct or serious misconduct which results in their termination or their resignation, the principal must provide written notice within 30 days to the Teachers Registration Board of Western Australia in accordance with State legislative requirements.
- 5.4 It is recommended that all formal meetings (including witness interviews) are conducted by the principal in the presence of an appropriate staff member (i.e assistant/deputy principal, senior member of staff or other relevant person) and that detailed records are retained of all relevant meetings and conversations.

Written Warnings

Written warnings must stipulate:

- 1. How the staff member's behaviour constitutes misconduct;**
- 2. What behaviour is expected in the future;**
(Details of the behaviours and attitudes requiring correction as well as those expected – be specific)
- 3. A time frame for improvement;**
(Including dates of observation of classes and formal review meetings)
- 4. The consequences of further misconduct; and**
- 5. Details of support offered by the school.**

Allegations of Misconduct / Serious Misconduct

Phase 1: Pre-meeting

Before the initial meeting with the staff member, draft and deliver a formal letter that outlines:

- the specific details of the allegation(s) and the process of the forthcoming investigation
- the date, time and venue for the meeting
- their right to attend this (and all formal meetings) with a support person of their choice
- clear dates and expectations regarding response time to tabled allegation(s) (in writing and verbally at a second formal meeting). A seven (7) day window is recommended.

Phase 2: Initial Meeting

Conduct the first formal meeting:

- reiterate the allegation(s), investigation process and possible outcomes (formal warning, dismissal, etc)
- record and produce a detailed transcript of the meeting present summary / transcript to the staff member post-meeting for written comment and signature
- reiterate response conditions (usually 7 days) and set a date for the formal response meeting

File transcript at school.

Phase 3: Formal Response Meeting & Conduct Investigation

- interview staff member with regard to their written response to the allegation(s) tabled in the first meeting. Produce and file a transcript
- thoroughly interview witnesses and produce detailed transcripts (use a secretary to transcribe testimony or record and transcribe post-interview). All transcripts must be dated and signed
- at the conclusion of all witness interviews, produce a summary of findings
- copies of all documentation shall be filed at school.

Decision: Terminate

- if, after consideration of the investigation and the response, you believe the staff member to be guilty of the alleged **serious misconduct** and decide to terminate, a letter of dismissal shall be provided
- for ongoing misconduct issues, termination may only occur **after a second formal warning**
- Provide written notice within 30 days termination (or resignation) of staff member to Teachers Registration Board of Western Australia

Consultation with the Employment and Community Relations Team

- contact a Consultant to decide upon the form and conduct of the investigation
- discuss and ascertain nature of suspension for the duration of investigation (e.g. full pay). Add detail to initial letter
- make contact at any point for reiteration of process or to clarify questions

Phase 4: Post - Investigation

At the conclusion of the investigation (prior to any action being taken), the staff member shall be:

- advised of the findings (in writing), and;
- offered adequate opportunity to tender a written response to these findings (initially in writing followed by a formal meeting where detailed notes shall be recorded and filed)

Decision: Take Another Course of Action

- If you decide not to terminate, a formal written warning may be tendered (refer to reverse for detail).
- Reasonable time and assistance shall be offered to the staff member (in writing) to redress the problem (e.g. appropriate professional development or *Employee Assistance Program* access).

6. References

Rerum Novarum, Encyclical of Pope Leo XIII on Capital and Labor, 1891

Pope John Paul II, *Centesimus Annus: Encyclical Letter to His Venerable Brother Bishops in the Episcopate The Priests and Deacons Families of Men and Women Religious All the Christian Faithful and to all Men and Women of Good Will on the Hundredth Anniversary of Rerum Novarum*, 1991

CECWA, Code of Ethical Conduct

7. Related Documents

Pope John Paul II *Laborem Exercens: Encyclical Letter to His Venerable Brothers in the Episcopate to the Priests to the Religious Families to the sons and daughters of the Church and to all Men and Women of good will on Human Work on the ninetieth anniversary of Rerum Novarum*, 1981

Industrial Relations Act 1979 (WA)

Teachers Registration Act 2012 (WA)

Fair Work Act 2009 (Cth)

8. Review History

Year of Review:	Reviewed by:	Amendments/Review
1992	SPC	Originally Released
1995	SPC	Reviewed
1998	SPC	Reviewed
2003	SPC	Reviewed
2008	SPC	Reviewed
2010	CEOWA	Reformatted
2013	SPC	Reviewed

9. Next Review

Year:	CEOWA Standing Committee Responsible
2018	School Personnel Committee