



# TEACHER DISCIPLINARY PROCEDURES

# Employer powers

- BOT to control management of school, subject to the law (Education Act 1989, s 75)
- Principal to comply with BOT's policy directions and to manage day-to-day administration of the school (Education Act, s 76)
  - ◆ Principal both CEO and employee of BOT
- BOT to be a good employer (State Sector Act, s 77A)
- BOT has full employer powers to appoint and dismiss staff (State Sector Act, s 77E)

# Teacher conduct and discipline: A myriad of standards

- Legal requirements:
  - ◆ Categories of conduct to be avoided in CAs
  - ◆ Professional standards in CAs
  - ◆ Teachers Council criteria for registration and Rules
  - ◆ Local requirements set by BOTs
- Expectations
  - ◆ Teachers Council Code of Ethics
  - ◆ PPTA Code of Ethics
  - ◆ Community
  - ◆ Cultural differences lead to different expectations
- Guidelines, e.g. from MoE

# Choosing the correct procedures

- School complaints policy?
- Competence or discipline?
- Teacher conduct and discipline
  - ◆ CA provisions

# Teacher conduct and discipline

(cl 3.4, STCA;2.4, ASTCA )

- CA lists categories of misconduct, e.g.
  - ◆ Disobedience of lawful orders / instructions
  - ◆ Negligence, carelessness or indolence in carrying out duties as a teacher
  - ◆ Gross inefficiency as a teacher
  - ◆ Misuse or failure to take proper care of school property or equipment
  - ◆ Absence without valid excuse
  - ◆ Conduct in her / his capacity or otherwise unbecoming to a member of the teaching service (3.4.5, STCA; 2.4.7, ASTCA)

# Serious misconduct: Teachers Council

- **Serious misconduct is conduct that**
  - ◆ adversely affects, or is likely to adversely affect, the well-being or learning of one or more students; or
  - ◆ reflects adversely on the teacher's fitness to be a teacher; and
  - ◆ is of a character or severity that meets the TC's criteria for reporting serious misconduct.

# Disciplinary procedures

- Principal deals with minor complaints informally
- Where breach of discipline appears to have occurred, employer to determine whether to initiate procedures
  - ◆ Disciplinary matters to be handled in a way which protects mana and dignity of teacher
  - ◆ Teachers may seek whanau, professional and/or PPTA support.
- When an allegation of misconduct is received, teacher to be informed of specifics in writing and advised of right to have Association (FO) representation at any stage
- Employer shall make initial enquiries, if considered appropriate. Initial enquires conducted by principal, if authorised by BOT. Matter may be resolved by agreement.

# Formal investigation

- If not resolved, complaint may be referred to BOT for a formal investigation
  - ◆ BOT writes to teacher re: reason for investigation, invites teacher to respond in writing, advises of right to PPTA (FO) representation
  - ◆ BOT provides all relevant material to teacher (natural justice)
- If student/staff welfares so requires, BOT can suspend teacher (on pay, except in exceptional circumstances) or transfer teacher to other duties



## Formal investigation (cont.)

- BOT to conduct investigation. Teacher / rep invited to attend and make submissions
- If complaint upheld, teacher / rep informed and invited to make further submissions (e.g. about penalty/mitigating circumstances, contribution to school)

# Possible outcomes

- Possible outcomes: no further action, apologies, PD, warning, dismissal
- Appeal mechanism: PG
- If dismissal, BOT reports to Teachers Council
- Teacher can face double or triple jeopardy

# Resolving conflict in a Maori context

(3.5, STCA; Conflict resolution: 2.5, ASTCA)

- Employee to be advised in writing of specific matters causing concern
  - ◆ Agreement of employee and employer needed to use process
    - ◆ Can take place on marae
    - ◆ Can have whanau support for all
    - ◆ Guidance and advice often provided by kaumatua and kuia for all
  - ◆ If a resolution, it is recorded in writing, signed by parties. Copy kept on employee's file.
  - ◆ Parties may withdraw from process at any time. Competence and/or discipline procedures may then be used.

# Problems which have arisen: What to avoid

- Acting on verbal or anonymous complaints
- Pre-determination; bias
- Principal the complainant, but conducts initial enquiries
- Unreasonable time frames
- Students interviewed in groups

# Problems which have arisen: What to avoid (cont.)

- Not giving teacher full complaint / witness statements
- Not providing opportunity for teacher / rep submissions before BOT decides on suspension
- BOT basing decision on gut reaction, not “on the balance of probabilities”
- Taking into account past warnings to uphold complaint

# Lewis v Howick College BOT

- Case heard in ERA (dismissal justified) and EC (dismissal unjustified)
- Chief Judge Colgan (EC) stated that
  - ◆ employers of teachers must act to a high standard (because teachers face double jeopardy – reporting to the Teachers Council; possible loss of a career)
  - ◆ Employers are expected to abide by statutory requirements, collective or other employment agreements and to comply with their own unilaterally promulgated procedures
  - ◆ Errors made by the employer included bias and not providing all information to the teacher (bad faith)
  - ◆ While the dismissal was held to be unjustifiable, the teacher was not reinstated because of his contributory conduct
  - ◆ The procedural domination by lawyers in this case was at the expense of educational input. The involvement of the PPTA, NZEI and NZSTA is preferred.

# Meads and Pukekohe High School

- Case determined in the ERA.
- Issues which arose:
  - ◆ previous incidents
  - ◆ dealing with complaints after final written warnings
  - ◆ removing units from the teacher (dismissal; then reinstatement with demotion) when the issues were in his role as a teacher, not as a unit holder
- Process found to be unfair, as matters were taken into account which should not have been. A reasonable employer would not have dismissed Mr Meads.
- The teacher was reinstated to his position, with units, but with a warning and support programme.

# Fairness and reasonableness

“Dealing with inadequate performance or other unsatisfactory employment issues is not a no-win legal minefield for employers, to be avoided only by buying off employees.

It is an area of employment relationships in which, because of the potential consequences to employees, the law expects employers to meet standards of fairness and reasonableness in all the circumstances of any particular case.”

Chief Judge Colgan,

“Law only requires fairness and balance”, NZ Herald, 20/2/2008





# Teacher disciplinary issues can be managed well

- Good faith, good will, natural justice, consultation and effective communication needed
- Contestable advice given: Bots accountable for their decisions
- Parties and advisors should seek to agree on processes which do not compromise parties' rights, are consistent with legislation, CAs and the principles of natural justice to minimise the risk of / need for legal action.