

## Misconduct and Serious Misconduct

Misconduct is when an employee does something wrong either by doing something, not doing something, or through their behaviour. This may justify some disciplinary action being taken by the employer (the school board).

When deciding on how to respond to a misconduct allegation, an employer must ensure they conduct a fair investigation to see whether the allegation has been upheld before initiating a disciplinary process. The employer's response must be fair and reasonable in all circumstances.

### Investigating an allegation against an employee

- The delegations to the principal provide an opportunity for the principal to initiate an informal enquiry (investigation) into the allegation raised against the staff member.
- The main documents that will guide the principal's informal investigation are the school complaints policy, the relevant collective employment agreement, and The Code of Professional Responsibility (for teachers).
- Avoid taking any action that could be seen as 'acting in bad faith' or not adhering to the Employment Relations Act 2000. Both parties are required to behave in good faith toward each other and not take any deliberate action to undermine the other during an investigation process.
- The employee needs to be advised about the allegation, provided all information being relied on in the investigation (e.g. copy of the complaint/witness statements) and given a reasonable opportunity to respond either in writing or at a meeting with a support person present.
- In every written communication the employee must be advised to seek support, from NZEI Te Riu Roa if they are a member.
- If the principal is unable to resolve the allegation informally, the principal will write a report of his/her investigation, using this as part of the referral to the board who may decide to investigate further. The principal sends a letter to the employee to tell them the complaint has been referred to the board.
- Just as the principal can choose to refer the matter back to the classroom teacher, the board could choose to refer the matter back to the principal with a recommendation for resolving at an informal level or they can decide to formally investigate an allegation of misconduct or serious misconduct.

## Examples of Misconduct and Serious Misconduct

Misconduct	Serious Misconduct
<ul style="list-style-type: none"><li>• Using inappropriate language</li><li>• Using social media during contact time</li><li>• Minor instances of failing to follow an employer's reasonable and lawful instruction.</li><li>• Minor breaches of expected teacher conduct.</li><li>• Lateness.</li></ul>	<ul style="list-style-type: none"><li>• Violent behaviour</li><li>• Bullying</li><li>• Harassment</li><li>• Theft or fraud</li><li>• Behaviour that endangers the health and safety of students, the employee, or others</li><li>• Use of illegal drugs at work</li><li>• Dishonesty</li><li>• Those listed by the Teaching Council</li></ul>

The Teaching Council's [examples of misconduct and serious misconduct](#).