



Department of
Education

A guide to the management of staff misconduct complaints

Standards and Integrity

A GUIDE TO THE MANAGEMENT OF STAFF MISCONDUCT COMPLAINTS

The Department of Education is committed to delivering quality services that are responsive to the needs of schools and wider community. Complaints are a valuable source of feedback and an important tool to assist the Department in achieving its goals for a strong public school system.

This document is intended to guide Principals, Regional Executive Directors and Business Unit Directors/Managers through the process of receiving a complaint regarding staff conduct, through to the resolution of the complaint. It is intended to assist you in:

- understanding the role and requirements of the Standards and Integrity Directorate (SID);
- identifying instances of misconduct that need to be referred to SID;
- confidently resolving staff conduct complaints where it is appropriate for you to do so; and
- achieving positive outcomes for all parties involved.

Nothing in this guide should prevent the normal discourse and exchange of advice between schools and Education Regional Offices in resolving complaints.

Phases in the Complaints Process

For the purposes of this guide, the complaints process is separated into two phases.

Phase one is the initial part of the complaints process or when the matter is first brought to the attention of a Principal, Regional Executive Director or Director/Manager. The guide provides some information about how the matter should be handled and what can be done.

Phase two describes the part of the complaints process from the point that SID becomes involved. Phase two also describes the SID assessment process as well as resolution options (e.g. Local Resolution; Local Resolution with SID oversight and SID Investigation).

Phase One

Incident/Allegation

A matter can come to your attention in various ways. It may arise from a parent complaint, a student complaint, a witness complaint, a report directly from a teacher or other employee, or it may come to notice via an Online Incident Report.

What should the Principal, Regional Executive Director or Business Unit Director/Manager do?

Initial Notification

Once a matter comes to your attention, you need to get an understanding of exactly what you are dealing with. To do this you will need to:

For oral complaints:

- listen and collate information;
- take notes of conversations with the complainant or the person who reports the incident to you; remember the points of which to make particular note: who, what, where, when and how; and
- clarify information, if necessary, with the complainant or the person who reported the incident to you to get a better understanding of the matter.

For written complaints:

- contact the complainant to clarify any aspect of the written complaint that may be unclear and accurately record any points of clarification.

If the matter is deemed to be one that ought to be reported to SID (see the Complaints Categorisation Schedule), you should complete an Initial Report Form (which can be requested from SID or downloaded from the SID website) and provide all the information you have at that time.

It is important to note that where the matter is clearly one that should be referred to SID (refer to Consider the Risk matrix page 8) you should not actively seek witness accounts before the matter is referred. In serious matters, it is possible that questioning of parties involved

could adversely affect the ultimate outcome of the matter. For this reason it is not recommended that you conduct enquiries into the facts and circumstances.

If effective management of the worksite requires immediate action, or, if you are unsure as to whether or not it should be managed locally, then contact the SID Assessment Team on 1800 655 985 for advice at the earliest opportunity.

Resolving complaints at the local level

What types of matters can be resolved locally?

Once you have an understanding of the issue, you can make an initial assessment of whether SID needs to be notified. You may use management prerogative to resolve routine matters, such as the ordinary day-to-day situations which are most appropriately dealt with by you. These include:

- matters relating to the routine performance management of staff;
- timesheet anomalies;
- vehicle use (minor issues);
- gossip (minor, non-sexual) on social networking sites; and,
- being rude (minor) to a parent or colleague.

SID is often asked “What can I do in addressing issues at a local level?” There is no easy answer, but it is fair to say that the objective in addressing matters at the local level is more conflict resolution than disciplinary action. Often this will involve establishing all relevant facts through a procedurally fair process and, where necessary, preventing further workplace/school community disharmony through clarification of the contractual responsibilities of the employee. If the circumstances are such that you feel a disciplinary outcome is more appropriate, then you should consult with SID prior to initiating a local complaint resolution process. Part-way through the local resolution of a matter, if you become aware of additional information that may warrant SID advice or intervention, it is also appropriate to consult with SID.

If a matter is deemed by the Principal, Regional Executive Director, Business Unit Director/Manager and/or SID as being suitable for resolution at the local level with no further SID involvement then a line manager may address the issue to achieve a resolution. It is important to remember that this local resolution process is not a disciplinary process. Rather, it involves conflict resolution. The focus ought to be on the need to establish all relevant facts in relation to a complaint and then discussing with the parties the options for resolution.

Some suggestions for local resolution

Arrange for yourself or an appropriate delegate to meet with the staff member involved to discuss the matter and find out what happened. This discussion can explore how the incident arose and, where appropriate, how the incident could have been avoided; what could have been done differently; and what, if any, lessons are possible? The aim of this is to provide the staff member with guidance and feedback, and, where appropriate, support to minimise the risk of further complaints including relevant professional development.

- You may choose to ask questions along the lines of who, why, what, where, how, when, to find out more information about the matter. Explain the process to the staff member, particularly that it is not disciplinary in nature, and what will happen next.
- Meet with the parties (e.g. parents, students, other staff) who may be able to provide more information or input.
- Consider options to resolve the matter. They may include a meeting between the parties (along the lines of mediation) with a view to reaching agreement for resolution.
 - Establish the nature of the problem;
 - Facilitate positive conversation;
 - What would be an ideal resolution to the matter for both parties; and
 - What would be an acceptable outcome from your perspective?
- Remind all parties of their obligations, particularly the need for mutual respect and confidentiality.
- Consider whether training and professional development opportunities may be a

positive outcome. In doing so, you may wish to suggest courses that might benefit the staff member.

- Commence performance management – the matter may identify a need for you, as a line manager, to undertake some form of performance management to monitor the development of the staff member involved.
- Confirm the outcome in writing for each of the parties. If the complainant is a student, a letter should be sent to their parents/caregivers. The letter to the complainant or parents/caregiver should:
 - advise that the matter has been examined and should report the outcome;
 - advise that you are satisfied that the matter has been addressed;
 - acknowledge any area of the complaint you feel was not sufficiently handled and advise what steps are being taken to address this (include an apology if that is appropriate); and
 - thank them for any co-operation they may have provided.

This letter can briefly outline what has been done and agreed as an outcome.

The letter to the staff member should reiterate your discussions and the agreed outcomes, and advise that the matter is closed. This provides clarity and certainty of the outcome and may, where appropriate, include directing their attention to the relevant Departmental policies or other resources.

Once the complaint has been addressed, it is recommended that a record is made of the matter, the action taken and the outcome, and for this to be retained at the school or Education Regional Office for school based complaints and within a secure TRIM file for non-school based complaints. No correspondence to SID regarding the process used or the outcome achieved is required.

Escalation protocol

In certain circumstances it may be appropriate for principals, in consultation with their Regional Executive Director, to escalate a complaint to their Education Regional Office to follow through with the relevant local level

response (e.g. performance management, grievance resolution etc). Escalation of a school level complaint to the Education Regional Office should only occur if the complaint is against the principal or, if the complainant is dissatisfied with the final outcome of a school level complaint process.

Section 63 of the *School Education Act 1999* outlines some of the key functions of a principal; the resolution of complaints against personnel and the performance management of staff is a fundamental process in the achievement of these functions. Alternatively you can consult with SID if, for example, you consider that:

- the matter is such that it cannot be addressed via the process outlined above;
- facts or information come to hand which suggest the issue is more serious than first thought; or
- there are other circumstances that you feel warrant escalation.

What needs to be reported to SID?

Principals, Regional Executive Directors and Business Unit Directors/Managers should refer to the attached Complaints Categorisation Schedule, Complaints Resolution flowchart (page 5), and Consider the Risk Matrix (page 6) to inform and guide decision-making. These documents assist decision-makers to develop a common understanding across the education system and provide assurances to staff who may be the subject of complaints that they will be treated fairly and consistently wherever they may be located in the system.

These documents make it clear that certain complaints, depending on their nature, can be addressed locally, without reference to SID. Other complaints must be directed by local managers to SID. However, whether a complaint is addressed locally, or centrally by SID, there is an expectation by the Director General and external monitoring bodies that it will be addressed in a procedurally fair manner and in compliance with any relevant legislation.

If in doubt, ask yourself:

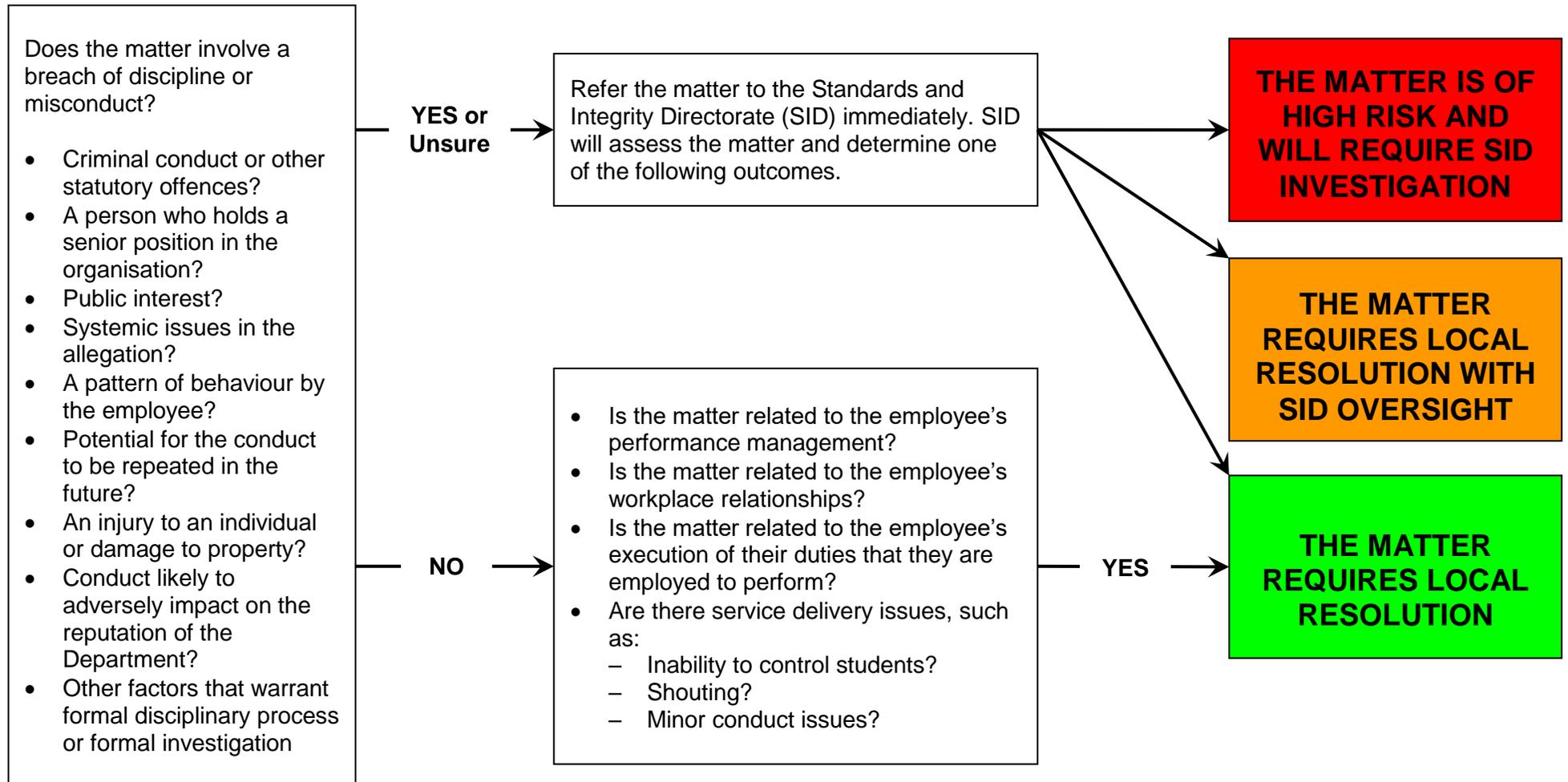
- Am I feeling uncomfortable about the situation?
- Are my actions legal and consistent with whole-of-government and Department policies?
- Are my actions in line with the WA Public Sector Code of Ethics and the Staff Conduct and Discipline policy?
- How would others view my actions?
- Would my actions stand up to public scrutiny?
- Should I discuss this with someone else e.g. colleague, supervisor?
- If your child was the complainant, would the staff member's conduct be acceptable to you?
- What would be a reasonable outcome with which you would be satisfied?

These questions are more indicative than definitive in guiding your response and approach.

REMEMBER: “If in doubt, check it out” and consult with SID on 1800 655 985

Complaints Resolution Flowchart

When assessing a complaint to determine whether it requires Standards and Integrity involvement, the following factors must be considered:



If in doubt, check it out – Ph: 1800 655 985

Consider the Risk Matrix...

		Extent of SID Management		
		Low	Moderate	High
Risk Level of Incident or Complaint	High * <i>(Matter should be referred to SID and will be managed by SID.)</i>	<i>All matters considered to be of high risk will receive a moderate to high level of management from SID.</i>	<ul style="list-style-type: none"> • Inappropriate/sexualised communication to students: <ul style="list-style-type: none"> – social networking sites – other internet applications such as instant messaging, chat rooms etc – phone calls, text messages or video calls • Highly offensive comments or behaviour by a staff member 	<ul style="list-style-type: none"> • Employee charged with a criminal offence • Serious misconduct • Sexualised and/or violent physical contact made with a student by a staff member • Inappropriate handling of a student by a staff member with <i>sexual</i> connotations • Inappropriate handling of a student by a staff member (<i>Non-sexual</i>) • Accessing child exploitation material
	Moderate * <i>(Matter should be initially referred to SID but may be managed locally with SID oversight.)</i>	<i>All matters considered to be of moderate risk will receive a moderate to high level of management from SID.</i>	<ul style="list-style-type: none"> • Breach of Departmental Code of Conduct, policies, or Public Sector Code of Ethics <i>(General concerns about an employee's conduct, or careless or negligent behaviour.)</i> 	<ul style="list-style-type: none"> • Minor physical contact • Other minor misconduct • Inappropriate comments or behaviour by staff member in presence of students <i>(With sexual connotation)</i>
	Low <i>(Unless other issues emerge, these matters are generally handled at local level.)</i>	<ul style="list-style-type: none"> • Minor Issues: <ul style="list-style-type: none"> ○ timesheet anomalies ○ vehicle use ○ inappropriate content on a social networking site ○ being rude to a parent ○ unruly class ○ shouting • Other minor complaints 	<ul style="list-style-type: none"> • Inappropriate or unreasonable behaviour by staff member in presence of students or parents/guardians. <i>(No physical contact or sexual connotation)</i> 	<i>All matters considered to be of low risk will receive a low level of management from SID.</i>

Report essential details of complaint / incident to SID immediately. Follow SID guidance



Phase Two

The role of SID in assessing complaints

Following consultation and/or referral to SID, the next phase is the assessment and allocation of the complaint for further action. The SID Assessment Team is responsible for the assessment of all matters concerning possible misconduct. The process of assessment will determine the most appropriate course of action to take to resolve such matters. These actions include:

1. Resolution at local level

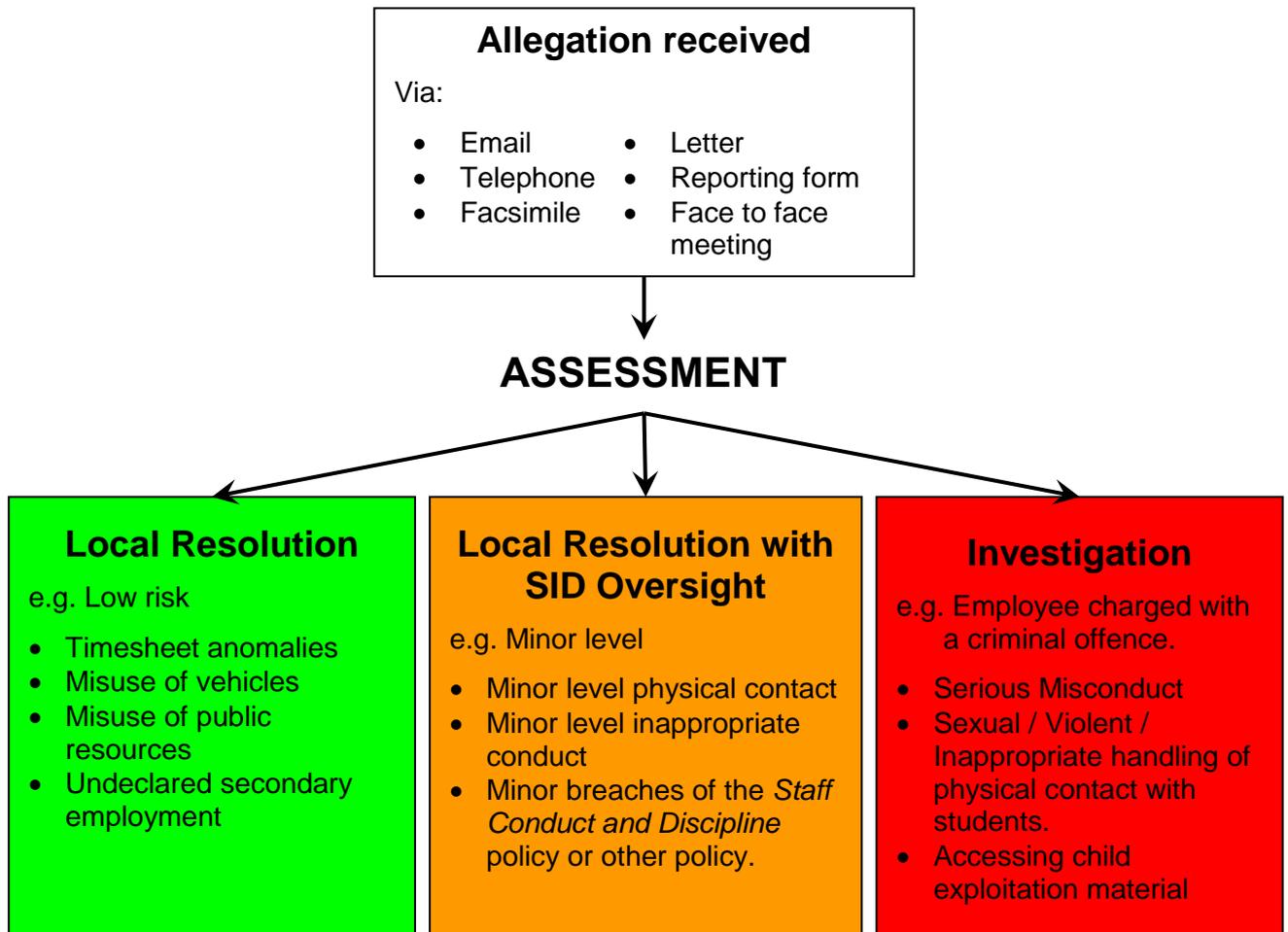
At a school/Regional or business unit level where a manager will resolve the matter in the context of usual performance management of staff, or other relevant process such as grievance resolution. These are the types of day to day routine matters that arise in the workplace and do not require a disciplinary outcome.

2. Resolution at local level with SID oversight

These types of matters are potentially suitable for disciplinary action but, in the context of all relevant considerations, are assessed as being less serious in nature and appropriately addressed locally. You will be asked to address the complaint in a procedurally-fair manner. Once you have established all the relevant facts and taken any appropriate action, you will be asked to provide a short report and copies of correspondence to SID.

3. SID Investigation

Resolution of these matters is the responsibility of SID and will usually involve a formal disciplinary process or an investigation.



Occasionally, a matter may appear suitable for SID investigation but may also have some potential for being appropriately managed locally if certain risk factors are low.

The assessment process will often include consultation between SID, the Regional Executive Director and/or the Principal or the Business Unit Director/Manager. In making assessment decisions, SID will consider the seriousness of the allegation and any advice provided. The SID Assessment Team may request further information to assist in its determination of the best resolution process; any such requests will include clear and specific direction as to what is required.

The SID Assessment Team is responsible for assisting the Director General to fulfil their obligations to report serious misconduct matters to the Corruption and Crime Commission (CCC); minor misconduct issues that meet certain criteria to the Public Sector Commission (PSC); and, where those matters involve alleged criminal conduct, to the Western Australia Police. Matters that are reported to the CCC require SID monitoring and final reporting back to the CCC once they have been finalised. This is why some matters are recommended for resolution at the local level with SID oversight; the oversight is necessary for the Director General to meet accountability requirements with the CCC.

Local Resolution with SID oversight ¹

If a matter is assessed by SID as suitable for local resolution with SID oversight, all of the previous suggestions for local resolution apply. Implementation of local resolution with SID oversight means that no formal investigation by Investigators at SID will take place. Local resolution with SID oversight does not seek to establish proof of the details of a matter in the context of making a disciplinary finding. The process is designed to acknowledge that a complaint has been made and to provide all parties involved with the opportunity to clarify what happened and to consider and reflect on the relevant policies and expectations of the

Department of Education. It is not premised on an assumption that any transgression has occurred.

Such action may recognise that an employee has not fulfilled his/her contractual obligations in this instance and may, as a preventative measure, necessitate directive action issued in the context of normal performance or line management rather than a disciplinary process. For employees who are subject to the provisions of the *Public Sector Management Act 1994*, this action includes Improvement Action as defined. You are encouraged to gather sufficient information to allow you to make an informed decision about the appropriate local method of resolution, the likelihood of resolving the matter and what is a reasonable outcome.

Essentially, the only difference between Local Resolution and Local Resolution with SID oversight is that a matter with SID oversight will require a report from you outlining the actions taken, the outcome achieved and copies of any correspondence/documentation from the process. This is required in order to meet the Department's accountability obligations to the CCC. However, it should be emphasised that SID staff are available to provide on-going support and guidance to Principals, Regional Executive Directors and Business Unit Directors/Managers throughout the process.

What will SID require?

- A report as to what action was taken to resolve the matter including:
 - what was done to address the complaint;
 - the outcome achieved;
 - a copy of any notes from discussions held; and
 - any training or professional development suggested for the staff member
 - who is the subject of the complaint.
- A copy of the letter you sent to the complainant. If the complainant is a student, a letter should be sent to their

¹ It is important to make a clear distinction between performance management and disciplinary processes. Consultation with legal services indicates that there can be no application of a penalty or anything that can be perceived as a penalty outside of the disciplinary process. Therefore any preventative measures must be taken in the context of performance management rather than discipline.

parents/caregivers as well as any response or indication as to whether they were satisfied with the outcome.

The letter should:

- advise that the matter has been looked into and note the outcome achieved;
 - advise that you are satisfied that the matter has been addressed appropriately;
 - acknowledge any area of the complaint you feel was not sufficiently handled and advise what steps are being taken to address this (include an apology if that is appropriate);
 - thank them for any cooperation;
 - advise that all related documentation has been forwarded to SID; and
 - provide them with advice as to how to escalate the matter if they are dissatisfied with the local complaints process.
- A copy of the letter you sent to the staff member. The letter should:
 - reiterate your discussions and the agreed outcomes;
 - advise that the matter is closed (this provides clarity and certainty of the outcome and may, where appropriate, include directing their attention to the relevant departmental policies or other resources.);
 - thank them for any cooperation;
 - advise them that all related documentation has been forwarded to SID; and
 - provide them with advice about who to approach if they are dissatisfied with the local complaints process.

Letters can be brief but need to contain sufficient information to demonstrate the outcome, as this is a key accountability requirement. Confidentially recording in writing that the caregivers have had this matter discussed with them and are aware of the outcome is an important part of the documentation required.

SID will provide these documents to the CCC, which has a statutory function to review how the Department has dealt with allegations of misconduct.

SID Investigation

If a matter is retained at SID for investigation, we will require your assistance and cooperation. This may involve:

- assistance with the service of letters;
- placement of staff;
- information and advice;
- gaining access to or obtaining copies of documents; and/or
- facilitating staff or student interviews.

Investigations undertaken, particularly those under Part 5 of the *Public Sector Management Act 1994*, can often be lengthy and complex. We encourage ongoing dialogue between the school, Education Regional Office or business unit and the SID investigator about any issues and/or concerns as the matter progresses. SID Investigators will liaise with the relevant parties throughout the course of an investigation so they remain informed of any major developments

REMEMBER: You are not expected to undertake formal disciplinary processes, and when matters are referred to you, they are to be resolved outside of disciplinary processes.