

**THE PROTESTANT SEPARATE SCHOOL BOARD
OF THE TOWN OF PENETANGUISHENE**

POLICY MANUAL

POLICY TITLE:

**Safe and Accepting Schools -
Progressive Discipline Regarding Staff / Employees**

SECTION/CODE:

School Operations D – 51E

APPROVAL DATE

November 9, 2020

SUPERSEDES:

November 26, 2019

NUMBER OF PAGES:

Page 1 of 33

REVIEW DATE:

November 2024

1.0 POLICY STATEMENT

It is the policy of the (PSSBP) to apply progressive discipline in order to provide guidance in correcting unacceptable behaviour and to discourage its recurrence.

The Board will establish administrative procedures for the progressive discipline process to ensure fair and consistent treatment of all employees.

2.0 PURPOSE

The Protestant Separate School Board of the Town of Penetanguishene (PSSBP) believes that its first priority is to provide the best possible educational environment that supports student achievement for all students in its charge. The Board is responsible for employing quality staff who conduct themselves appropriately and in a professional manner in its workplaces. Employees who engage in inappropriate conduct or whose behaviour conflicts with Board policy will be subject to appropriate discipline. Employees employed by The Protestant Separate School Board of the Town of Penetanguishene (PSSBP) are expected to respect and uphold Protestant values and teachings and follow the ideals as outlined in the Boards Mission, Vision and Values statements. The key objective of progressive discipline is to assist employees in understanding that a conduct or behavioural problem exists and that there is opportunity for improvement.

3.0 GUIDELINES

Please see *A Guideline for Progressive Discipline Regarding Staff/Employees* as part of this policy.

**THE PROTESTANT SEPARATE SCHOOL BOARD
OF THE TOWN OF PENETANGUIHENE**

POLICY MANUAL

POLICY TITLE:

SECTION/CODE:

**Safe and Accepting Schools -
Progressive Discipline Regarding Staff / Employees**

School Operations D – 51E

APPROVAL DATE

SUPERSEDES:

NUMBER OF PAGES:

REVIEW DATE:

November 9, 2020

November 26, 2019

Page 2 of 33

November 2024

THE PROTESTANT SEPARATE SCHOOL BOARD
OF THE TOWN OF PENETANGUISHENE

POLICY MANUAL

POLICY TITLE:

SECTION/CODE:

Safe and Accepting Schools -
Progressive Discipline Regarding Staff / Employees

School Operations D – 51E

APPROVAL DATE

SUPERSEDES:

NUMBER OF PAGES:

REVIEW DATE:

November 9, 2020

November 26, 2019

Page 3 of 33

November 2024

**A GUIDELINE FOR PROGRESSIVE
DISCIPLINE REGARDING
STAFF/EMPLOYEES**

2018

This Guideline has been approved as a supplement to Policy # D51e Safe and Accepting Schools – Progressive Discipline Regarding Staff/ Employees. The Elementary Teachers' Federation of Ontario (ETFO) representing both Teaching and Non-teaching Staff has been consulted.

This Guideline aligns with The Protestant Separate School Board of the Town of Penetanguishene (PSSBP) philosophy of corrective action and the collective agreement obligations.

TABLE OF CONTENTS

INTRODUCTION	1
SECTION ONE: DEALING WITH EMPLOYEE MISCONDUCT	2
1.0 Misconduct Distinguished From Substandard Performance	2
2.0 Examples of Unacceptable Behaviour	2
3.0 Did The Employee Breach The Rule Or Commit The Offence?	4
4.0 Investigation Of Complaints Or Allegations Against An Employee	5
5.0 Did The Culpable Behaviour (Misconduct) Warrant Discipline?	5
6.0 Is The Penalty Appropriate?	6
SECTION TWO: PROGRESSIVE DISCIPLINE	9
Timelines	9
Due Process	9
Double Jeopardy	10
Five-Step Process	10
APPENDIX A – A GUIDE TO THE INVESTIGATION STAGE	14
APPENDIX B – SAMPLE LETTER OF COUNSEL	19
APPENDIX C - SAMPLE DISCIPLINE LETTER	20
APPENDIX D – ONTARIO COLLEGE OF TEACHERS PROFESSIONAL ADVISORY	21

INTRODUCTION

This document has been developed to provide a consistent approach to address employee misconduct. Reviewing this document requires a clear understanding of the difference between behaviour and performance. This guideline addresses situations related to behaviour only.

The Protestant Separate School Board of the Town of Penetanguishene (PSSBP) believes that its employees are responsible and trustworthy and are capable of making decisions appropriate to their sphere of responsibility when given the necessary information, training and experience. Respect and trust in an education working environment are achieved by communicating reasonable expectations of acceptable conduct to employees, and by fair, objective and consistently enforced disciplinary procedures, including fair investigatory techniques, when those expectations are not met for reasons within the employee's control.

This guideline is for the use of the PSSBP, administration including the Principal/Vice-Principal and any Managers/Supervisors who may at some time be required to handle a matter of employee misconduct requiring disciplinary measures. Since employee misconduct, or culpable behaviour, is not a common occurrence for most employees, a resource tool is necessary to provide guidance to system leaders who may have little or no experience with this complex issue.

It is the general approach of the Board to correct behaviour, not punish it. The emphasis of the Principal/Vice-principal or Manager/Supervisor should be identification and isolation of problem situations in a supportive and non-intrusive manner before formal corrective action should be undertaken. However, discipline may be imposed without prior corrective action where the behaviour is serious, recurrent, or results in harm of any sort to another individual or risk to the Board's operations or reputation within the community.

Employees must be aware of the expectations of their employer, the reasons for the corrective action, and possible future consequences of any repetition of the behaviour. Every effort should be made to ensure that the employee understands that discipline is the result of his/her own actions and not from any personal animosity on the part of the Principal/Vice-principal or Manager/Supervisor.

Every incident of employee misconduct is unique, just as every individual is different; therefore, administrative responses to such behaviour must be considered in light of all the circumstances. The approach and response should be consistent, and must not reflect the application of rigid rules or arbitrary responses.

SECTION ONE: DEALING WITH EMPLOYEE MISCONDUCT

1. Misconduct Distinguished From Substandard Performance

A school Principal/Vice-Principal or Manager/Supervisor is expected to intervene when an employee's performance is not up to required standards or when the behaviour of an employee is not appropriate. The reason for this is that where substandard performance or behaviour continues over time and the employer, through its management representatives, can be shown to have knowledge of the employee's activities, arbitrators have ruled that such performance or behaviour was "condoned" by the employer.

Where performance standards are not being met, the school Principal/Vice-Principal or Manager/Supervisor must appraise the performance, clarify or set standards, inform the employee and provide resources to assist the employee. In addition the employee must be given time to improve. A performance appraisal review **is not considered discipline**, and will occur on a regular basis for all employees with the intended purpose being to grow professionally in their specific job. Where **behaviour** does not conform to expectations, the school Principal/Vice-Principal or Manager/Supervisor must advise the employee that the conduct is "culpable" or unacceptable, and that repetition of the misconduct will have consequences for the employee. Imposing consequences for employee misconduct is discipline. It is expected that once an employee is put on notice, there will be an immediate correction of the behaviour and that no time for improvement will be given. In fact, a good way to distinguish between performance and behaviour issues is to determine whether the employee can meet expectations immediately (culpable behaviour) or whether there is a learning curve (substandard performance).

2. Examples Of Unacceptable Behaviour

2.1 In The Workplace

2.1.1. Examples of unacceptable behaviour are listed below, but are not limited to:

- 2.1.1.1 lateness;
- 2.1.1.2 absenteeism (without pre-authorization, valid excuse and/or failure to notify);
- 2.1.1.3 abuse of sick leave;
- 2.1.1.4 inappropriate use of Board or school property (including computer/internet use, vehicles, student materials);
- 2.1.1.5 breach of confidentiality of student or other personal information (including confidential school or Board documents or information);

- 2.1.1.6 theft of Board property (including theft of communications such as making long distance personal phone calls);
- 2.1.1.7 threats/assaults;
- 2.1.1.8 missing assigned supervision;
- 2.1.1.9 physical, verbal or mental abuse of a student or another individual in the workplace (includes harassment);
- 2.1.1.10 insubordination (includes rudeness or disrespect)
- 2.1.1.11 breach of Board Policy(ies) or Procedure(s)

NOTE: Any conduct that is unprofessional or inappropriate in the workplace setting may be subject to disciplinary measures, the scope of which may be increased or decreased depending on the presence or absence of mitigating factors.

Mitigating factors take into account the context of the situation. A school Principal/Vice-Principal or Manager/Supervisor must consider what circumstances faced the employee when the misconduct occurred, and must consider any extenuating reasons that motivated the employee to the misconduct or poor performance, or that may have played a role in the seriousness of the misconduct. Mitigating factors do not necessarily excuse the conduct or determine that no discipline will be imposed. Rather, they may be considered in determining the extent or scope of the discipline, and whether an alternative response (such as remediation or support) may be in order in place of, or in addition to, the disciplinary sanction.

2.1.2 Mitigating factors may include:

- 2.1.2.1 the employee's prior disciplinary (or non-disciplinary) history;
- 2.1.2.2 the nature of the work at issue, vis-à-vis the employee's personal/professional profile (Includes the training, experience and background of the employee to address the assignment, and the need for or extent/availability of supports in the event of a particularly difficult assignment);
- 2.1.2.3 the interference or assistance (including involvement) of other persons and the nature of any relationship(s) between/amongst them;
- 2.1.2.4 the length of employment with the employer (a long term employee may be given the benefit of the longer tenure, unless the length of employment actually contributed to the seriousness of the behaviour);
- 2.1.2.5 the employee's health (physical, mental or emotional) or the presence/absence of an addiction or disability that may have contributed to the behaviour.

Mitigating factors must always be weighed against the risk of condoning employee misconduct/culpable behaviour.

It is advisable to carefully consider each situation that arises in light of the distinction between substandard performance and culpable behaviour drawn above. Imposing sanctions for performance matters without first trying to address the underlying issues through assistance and support may result in grievances. So too, treating culpable behaviour as a matter requiring lengthy remediation may be interpreted by an arbitrator as condoning the behaviour.

2.2 Out Of The Workplace

Employees of public institutions must be careful that, by their actions, they do not bring the reputation of the institution into disrepute or compromise the employee's ability to perform the work of the institution. Discipline of professional employees for misconduct outside the workplace has been supported by arbitrators. In a school board in particular, a teacher's behaviour may be seen to provide a bad example for students or to create an apprehension of risk to students. At the extreme, criminal behaviour such as drug trafficking, sexual assault or child abuse are examples of such misconduct, even where students of the Board are not directly involved.

Teachers, in particular, have a general duty under the *Education Act*, Section 264, to:

"inculcate by precept and example respect for religion and the principles of Judaeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues."

Teachers and other professional employees with professional qualifications such as nurses, accountants, engineers, psychologists and social workers, are also subject to professional standards of practice and ethical guidelines. A breach of the professional expectations and standards may result in discipline for just cause both by an employer and by the respective governing professional body.

3. Did The Employee Breach The Rule Or Commit The Offence?

Once a school Principal/Vice-Principal or Manager/Supervisor concludes that an employee did commit the offence or engage in the conduct at issue, he or she must decide the seriousness of the misbehaviour. That may determine the scope of the discipline, including whether it should attract formal discipline or an informal warning. Once that determination is made, the appropriate degree of discipline can be imposed, having regard to the presence or absence of mitigating factors.

If an employee disputes the discipline by grievance and the grievance is taken to arbitration, the onus, or burden of proof, is on the employer to establish, by way of verbal testimony and acceptable documentary evidence, that the employee was disciplined for just and proper cause. If the employer succeeds, then the onus shifts to the grievor to establish that there are other considerations which may bear upon the issue.

Unlike a criminal trial where the test is "proof beyond a reasonable doubt", at arbitration, an employer must satisfy the lesser standard of proof, "on a balance of probabilities".

This means it is likelier than not that the conduct took place. However, the more serious the allegation, the more convincing the Principal/Vice-Principal or Manager/Supervisor must be in establishing reliable clear and cogent evidence of the behaviour at issue.

4. **Investigation Of Complaints Or Allegations Against An Employee**

Criminal matters must be reported to the police and, if the employee is a teaching professional, to the Ontario College of Teachers. Criminal convictions and determinations of child sexual, physical or emotional abuse must be reported to the Children's Aid Society, and to the Ontario College of Teachers, or other governing professional body, if applicable.

Board policies may specify standard procedures for investigations. For instance, the Board policy A3a Workplace Violence and Harassment sets out the procedure for the investigation of a complaint of harassment or discrimination under the Ontario Human Rights Code.

Reporting a complaint about the behaviour of an employee is a very serious matter and with the right to complain comes the duty to act responsibly.

Many employees are concerned that they may be the victim of false or malicious allegations. Therefore, it is essential that they have confidence in the investigatory procedures. Complaints and allegations should be investigated promptly, professionally and without bias. Attached as APPENDIX A is A Guide to the Investigation Stage, which provides for due process as required in a full investigation.

5. **Did The Culpable Behaviour (Misconduct) Warrant Discipline?**

Five questions should be addressed when considering discipline, as follows:

5.1 Did the employee have knowledge of the rule or practice breached?

It should not be assumed that employees know the rules. The employer is under an onus to demonstrate that an employee knew or ought to have known a rule. An inadvertent or naïve violation is more suitably corrected by counselling or advice. This constitutes notice in the event the behaviour reoccurs. In progressive discipline, putting an employee on notice is called a "warning".

A school Principal/Vice-Principal or Manager/Supervisor should be aware of the Board's past practices since an employee may come to rely on these, rather than written rules, which may be contradictory. An employee may in some instances justifiably defend his or her actions through a claim of surprise or "detrimental reliance" on the past practice, although these claims will rarely succeed in the face of serious breaches of professional standards or ethics, or where clear harm results to an individual.

5.2 Considering all the circumstances, did the employee neglect his/her duties or responsibilities?

Deliberate or negligent behaviour justifies some discipline if knowledge of the rules can be demonstrated or if the employee has been warned, or if the knowledge is properly known to be a professional expectation.

5.3 Did the employee violate any rules or practices and were there harmful or potentially harmful consequences for the Board, its employees and/or its students?

When there are serious consequences to the employer, it becomes imperative to intervene formally with an employee. Discipline should be seriously considered even when no knowledge of the rules can be imputed to an employee in the following situations:

- 5.3.1. anyone has been physically or emotionally harmed;
- 5.3.2. anyone has been put at risk of physical harm;
- 5.3.3. the employee engaged in theft;
- 5.3.4. the reputation of the Board has been jeopardized.

5.4 Are there any mitigating circumstances?

Every situation must be viewed in context. A school Principal/Vice-Principal or Manager/Supervisor should consider what circumstances faced the employee when the misconduct occurred. They should examine any extenuating reasons that motivated the employee to act. In particular, it should be determined whether the employee was well (physically, mentally or emotionally) or was reasonably settled in a new assignment. These circumstances and other mitigating factors must always be weighed against the risk of condoning culpable conduct.

5.5 Has the employee been permitted to explain or deny the conduct?

The failure of a Principal/Vice-Principal or Manager/Supervisor to follow the rules of due process can often result in the overturning of discipline for even serious culpable behaviour. A Principal/Vice-principal or Manager/Supervisor must observe the rules of union representation in the collective agreement, and cannot impose any discipline until the employee has been given an opportunity to respond to the allegations and provide a defense, and to have union representation at the meeting in which the discipline is discussed or imposed.

Where an employee refuses to meet with the Principal/Vice-principal or Manager/Supervisor, a negative inference can be taken and discipline may be imposed. Where an employee denies an allegation, especially when there is only one witness or complainant, it is up to the Principal/Vice-principal or Manager/Supervisor to judge the credibility of the complainant and that of the employee and to make an appropriate determination as to culpability. In addition, where there are incriminating circumstances, such as possession of stolen property, an obligation to explain arises if the employee wishes to avoid discipline.

6. Is The Penalty Appropriate?

The employer may be found by an arbitrator to have just cause to impose discipline, but the level of discipline may be found to be excessive or inappropriate. In such cases, the arbitrator has the authority to substitute a lesser penalty. Therefore, Principals/Vice-Principals and Managers/Supervisors should always consider whether the penalty to be imposed is fair to the individual in the circumstances. It is this requirement which makes it

impossible to determine a schedule of pre-set penalties for various types of culpable behaviour.

Some of the major factors to consider are listed below.

6.1 How serious were the consequences?

What is the range of the effect of the behaviour on others or on the Board?

6.2 What were the circumstances under which the misconduct occurred?

Was the behaviour observed by others and were there mitigating circumstances?

6.3 Is this a long service employee?

The longer the service of the employee, the greater the effort required to educate the employee or to correct the behaviour. It may be relevant whether an employee is probationary or has achieved permanent status, since there is typically a lesser standard of tolerance applicable to misconduct on the part of a probationary employee. Similarly, an employer generally has a lesser responsibility to casual or temporary employees, although overall tenure with the employer continues to remain a consideration.

6.4 Is there a past disciplinary record?

If there is no record of previous misconduct, the emphasis should be on educating or correcting an employee's behaviour. Conversely, a lengthy record, particularly of conduct similar to the incident in question, will call for more serious discipline, up to and including termination. If there has been a long intervening period of good behaviour, this should be considered a mitigating factor.

6.5 Is there evidence of rehabilitation?

Discipline is not punishment, but a way of correcting and documenting behaviour. Therefore, the potential of an employee to rehabilitate or evidence of past successful remediation should weigh in favour of the employee. One possible indicator is whether the employee admitted to the conduct and whether contrition was demonstrated.

6.6 Was the conduct provoked?

Discipline can be mitigated by proof that the conduct was provoked.

6.7 What was the employee's state of mind?

If the conduct was planned or premeditated, then it should attract harsher discipline than spontaneous behaviour. It will also be important to know whether substance abuse was involved in order to fashion the appropriate disciplinary response. With alcoholism or illness, arbitrators will inquire as to whether the employee is fit to work or is likely to recover when considering the appropriateness of the penalty.

6.8 Is the response consistent with Board responses to other similar situations?

Although each fact situation will be unique, the pattern of disciplinary responses must be seen to be consistent. The employer is not entitled to discriminate by disciplining some employees and not others or by imposing different degrees of punishment for similar conduct. In addition, the Principal/Vice-principal or Manager/Supervisor should ensure that the behaviour in question has not been condoned by them or others in the past.

TWO: PROGRESSIVE DISCIPLINE

There is only one method of correcting employee behaviour that is recognized by labour arbitrators - progressive discipline. In the Protestant Separate School Board, this is a five step process, except in the case of very serious misconduct which may justify omitting one or more steps. Alternatively, steps may be repeated as required by the circumstances.

Not STEP 1. LETTER OF COUNSEL/VERBAL
REMINDER

Discipline _____

STEP 2. WARNING/LETTER OF EXPECTATION

STEP 3. WRITTEN REPRIMAND

Discipline

STEP 4. SUSPENSION WITHOUT
PAY

STEP 5. RECOMMENDATION FOR DISMISSAL FROM EMPLOYMENT.

1. **Timelines**

All discipline should be imposed as soon as possible after the misconduct so that there is a clear connection between the employee's conduct and the consequences.

2. **Due Process**

No discipline can be imposed before a meeting is held with an employee, and the union/federation, where applicable. This allows the employee to respond to the allegations and permits an examination of any mitigating factors. However, if the allegations are sufficiently serious that, if proven, they suggest the employee is a danger or risk to others in the workplace, the employee must be re-assigned to an alternative worksite without the same risk factors, or assigned to home until the investigation can be completed and a decision made as to culpability. This meets the expectations for due process, but should be implemented only as necessary in the Board's interest.

Re-assignment or assignment to home is non-disciplinary actions intended to give the employer the opportunity to conduct a fair investigation and determination of the matter. It also gives the employee the opportunity to prepare his/her response, without being subject to differential treatment at his/her usual work location. The employee must be given assurance the action is non-disciplinary and will not form part of his/her employment record, must be told the basis for the action, and should be given a reasonable anticipated date to conclude the investigation and be given the results. This should be put in writing. If the employee is subsequently exonerated, that too should be put in writing, but not placed in the employment file.

3. **Double Jeopardy**

Once an employee has been warned, reprimanded or suspended, there can be no further disciplinary action taken for the same occurrence, although the discipline imposed can be relied upon in establishing a pattern of misconduct that justifies advancement to the next stage or stages of progressive discipline.

4. **Five-Step Process**

4.1 STEP 1 – LETTER OF COUNSEL-Non-Disciplinary (LOC) or VERBAL REMINDER

A Letter of Counsel-Non Disciplinary or Verbal Reminder is usually the precursor to the imposition of formal written discipline which becomes a matter of record in the employee's personnel file. On a first instance of culpable behaviour, an employee should be put on notice of the Principal/Vice-Principal's or Manager/Supervisor's expectations, and the consequences of repetition of such conduct. The Letter of Counsel-Non Disciplinary is a written reminder that does not form part of the employee's file nor is it cc'd to anyone. As part of Human Resources issue management, any action, discipline or other, is recorded to bring closure to the issue. This includes verbal or Letter of Counsel. Once a Letter of Counsel/Verbal Reminder has been given, the incident is closed. An employee cannot receive another type of formal discipline for the same incident. A Letter of Counsel or Verbal Reminder is more informal than Step 2 or greater discipline which is contained within an employee's personnel file. While union representation is not required when issuing a Letter of Counsel or Verbal Reminder as a best practice, administration should offer the option for union representation or accept their request.

Employees generally respond favourably to professional or other advice from a Principal/Vice-Principal or Manager/Supervisor, particularly when the conversation is held soon after the event, in private. The Principal/Vice-Principal or Manager/Supervisor should take a positive approach with the goal of having the employee correct his/her own behaviour without resentment or embarrassment. It is important that the employee be told that it is a Letter of Counsel-Non-Disciplinary/Verbal Reminder and the first step in the Progressive Discipline process. A sample Letter of Counsel can be found as Appendix B.

The intent of a Letter of Counsel or Verbal Reminder is to correct, not punish. The Principal/Vice-Principal or Manager/Supervisor should advise HR of the Letter of Counsel-Non-Disciplinary or Verbal Reminder to advise that closure of the issue has been confirmed.

4.2 STEP 2 – WARNING / LETTER OF EXPECTATION

A Letter of Expectation is considered the second step of discipline. On a second instance of culpable behaviour, an employee should be put on notice of the Principal/Vice-Principal's or Manager/Supervisor's expectations, and the consequences of repetition of such conduct. This is formal written discipline which is filed in the employee's personnel file. Union representation is required for both the investigative meeting and the discipline meeting. The level of union representation required is defined by the terms of the applicable collective agreement.

In order to properly discipline an employee, a formal investigation meeting must be convened. If the employee is represented by a union or federation, the Principal/Vice-principal or Manager/Supervisor shall arrange for union representation by meeting the requirements of the collective agreement applicable to the employee. An employee must be advised of her/his right to union/federation representation.

The Principal/Vice-Principal or Manager/Supervisor shall confirm the warning in a Letter of Expectation which sets out the expectations for the future. (A sample letter may be found in APPENDIX C)

NOTE: There may be occasions when the culpable behaviour is so serious that formal discipline can reasonably be imposed without prior notice or a verbal warning having been given.

4.3 STEP 3 – WRITTEN REPRIMAND

If there is repetition of conduct for which an employee has been warned or the circumstances of an incident of culpable behaviour call for a more formal response, the employee in question should be reprimanded.

In order to properly reprimand an employee, a formal investigation meeting must be convened. If the employee is represented by a union or federation, the Principal/Vice-Principal or Manager/Supervisor shall arrange for union representation by meeting the requirements of the collective agreement applicable to the employee. An employee who is not unionized has no right to representation, but will be accorded the courtesy of accompaniment by a person of the employee's choice. The employee must be told you will be reviewing the information gathered during the investigation and will be deciding on next steps.

If it is determined that discipline is warranted, a Written Reprimand must be presented to the employee at a disciplinary meeting scheduled with the employee and union / federation representative. The letter must be addressed to the employee and should be signed by the immediate supervisor. The letter must contain the following:

- 4.3.1 a confirmation of the attendees at the meeting;
- 4.3.2 a confirmation of the disciplinary meeting;
- 4.3.3 a description of the wrongdoing;
- 4.3.4 reference to previous verbal/written warnings, if applicable;
- 4.3.5 a clear and concise statement of expectations;
- 4.3.6 a notice that this letter constitutes formal disciplinary action;
- 4.3.7 a notice that repetition of the behaviour will result in further disciplinary action;
- 4.3.8 a copy sent to the Board personnel file;
- 4.3.9 a copy sent to the applicable union/federation.

4.4 STEP 4 – SUSPENSION WITHOUT PAY

A suspension without pay is a temporary denial of employment by the employer, imposed as a disciplinary penalty. While future scheduled work can be affected, it is not possible to withhold pay for work already performed, or to decrease a vacation or other entitlement.

4.4.1. Investigating Before Imposing Discipline

There will be situations where the continued presence of the employee may be detrimental to the interests of the Board or compromise the safety and wellbeing of other employees and/or students. The alleged offender should be sent home with pay for the remainder of the work day with the requirement that the employee report for an interview as soon as possible to determine whether the employee can return to work. Any continuation of an assignment to home should be characterized as part of the investigation and be supported by the Supervisory Officer. If security is a concern and an employee has keys or other Board equipment in his or her possession, these should be turned in. No warnings or discipline should be imposed at this time. Once the investigation is complete, a disciplinary meeting may be scheduled.

4.4.2. Allegations of Criminal Activities

In the case of an investigation into allegations of serious criminal activities for which the employee could be dismissed if convicted, an employee shall be reassigned to home immediately, with pay, pending a determination by the police that charges will or will not be laid.

If the allegations involve sexual abuse of a student by a teacher, consult Professional Advisory – O.C.T., Sept. 27, 2002 (attached as APPENDIX D) for the correct procedures.

If charges are laid, the suspension may be continued, with pay, pending a court disposition or conclusion of a school board, Principal/Vice-Principal or management independent investigation into the allegations. If school board senior administrations have clear and cogent evidence of serious misconduct, independent of the police investigation, a suspension may be without pay, as discipline, or pending termination of the employee's employment if there is just cause and supporting evidence. The investigation, decisions and follow-up should be done only with the knowledge of the Supervisory Officer.

NOTE: A criminal charge without an independent investigation and clear and cogent evidence of wrongdoing will not support discipline or termination. However, if a police investigation results in no charges being laid, or the charges are subsequently dropped or the employee is found not guilty, there may still be an internal investigation which will require a continuation of the suspension until a disciplinary meeting or a termination proceeding is held.

4.5 STEP 5 – TERMINATION OF EMPLOYMENT

Termination of a permanent employee for cause must be approved by the Board upon the recommendation of the Supervisory Officer.

It is prudent to assume that all terminations will be litigated. The arbitration and court jurisprudence support the principle that terminations should only occur when corrective measures have failed, are inapplicable or there is no reasonable alternative. This standard usually requires a substantial accumulation of documentation and proof by the employer that the principles of progressive discipline have been followed.

A single act of misconduct will not normally be grounds for termination unless it is extremely serious in nature. Examples of acts that have been considered serious enough include significant theft, a serious case of dishonesty, willful and deliberate disobedience, aggravated assault, abuse of management, sexual harassment and criminal acts of violence and sexuality.

Once a school Principal/Vice-Principal or Manager/Supervisor determines that the conduct at issue is sufficiently serious to support possible termination of employment, he/she must report to the Supervisory Officer for direction and assistance. The Supervisory Officer will consult the Board.

**A GUIDE TO THE
INVESTIGATION
STAGE**

1. DUTY OF FAIRNESS

While investigations of alleged wrongdoing by employees are not limited by the restrictions of criminal law, such investigations must be conducted in a manner that allows any wrong to be detected, but protects the interests of the accused.

It should be kept in mind that interviews of complainants, witnesses and the accused employee are part of an investigative procedure which must be complete before any conclusions are drawn.

The accused employee must be presumed innocent until facts (what actually happened) demonstrate the misconduct.

Focus on the facts at this stage by obtaining the "who", "what", "where", "how" and if relevant, "why".

2. RECEIVING A COMPLAINT/ALLEGATION

The starting point of any investigation is usually the receipt of a complaint. The complaint can be written or verbal, but to be credible the identity of the complainant must be known, except in unusual circumstances where there is independent support for the credibility of the complaint. Basing an investigation on an anonymous tip without other corroborating facts or evidence may undermine later findings and conclusions, and may result in the discipline being overturned at arbitration.

Once a credible complaint is received, the matter to be investigated must be defined, the likely sources of relevant information must be identified, and the investigation must be initiated and continued through to disposition.

Complainants or witnesses are sometimes concerned about possible personal ramifications. The person receiving the complaint should advise a complainant or witness about some of the following issues and should seek immediate assistance from the Supervisory Officer.

2.1 REPRISAL

A complainant or witness should be counselled that an accused employee will be advised that, regardless of the truth of an allegation, any act of reprisal will result in disciplinary action.

2.2 PRIVACY

It is not possible to guarantee anonymity or complete confidentiality to any complainant or witness, but every effort will be made to protect the privacy of individuals. Depending on the seriousness of the matter, other senior management may have to be informed of the allegation. If the conduct

requires the Board or an individual to report the employee to the employee's professional governing body, the police or the Children's Aid Society, the name and contact information of the complainant(s) will have to be disclosed to the agency. If the investigation results in disciplinary action toward the employee, or the employee are in any way aggrieved about the circumstances, the employee's union has the legal right to file a grievance. The matter can then be advanced to arbitration for a decision on the merits of the complaint or with respect to the manner in which the investigation or complaint were handled. In any litigation, including arbitration, the law requires full disclosure of the material facts on which the employer is relying, including the names of complainants or possible witnesses to the conduct at issue. The complainant(s) or witness(es) must be advised that he/she/they may be required to give evidence under oath at the subsequent hearing, if any.

2.3 ADVERSE REPORTS BY TEACHERS ABOUT TEACHERS

Section 18(1)(b) of the Regulation under the Teaching Profession Act requires any member of the Ontario Teachers' Federation, on making an adverse report on another member, to furnish that member with a written statement of the report at the earliest possible time and not later than three days after making the report. There is an exception to this, for example when reporting sexual abuse of a student, the reporting member does not need to provide him/her with a copy of the report. There are no similar legal requirements for other employees.

3. WHO INVESTIGATES THE COMPLAINT/ALLEGATION?

Reports and investigations involving *Children in Need of Protection* follow requirements under the Child Youth & Family Services Act 2017, S.125.

In the case of relatively minor allegations, the immediate Supervisor of the accused employee should ordinarily be responsible for the investigation. In a school, the Principal would undertake the investigation of an employee the Principal supervises. In other cases, the employee's Manager/Supervisor is responsible. In all cases the appropriate supervisory officer should also be informed of the allegation(s) and the ongoing status of the investigation.

Exceptions to the general rule include circumstances where the school Principal/Vice-Principal or Manager/Supervisor is involved in filing the complaint, or is the subject of the investigation, or where his or her involvement would "taint" the decision (e.g. where he or she has a personal relationship with a complainant or accused employee) or where on reasonable grounds, the complainant or witness(es) is not comfortable or cannot be candid in the investigative interviews.

In cases of serious misconduct, the investigation may be undertaken by the Supervisory Officer or, in rare cases, at the direction of the Supervisory Officer, by an external professional investigator.

4. **ACCURATE RECORDS OF COMPLAINTS / INTERVIEWS**

When a school Principal/Vice-Principal or Manager/Supervisor receives a verbal complaint about an employee, it is essential that the complainant(s) be told that in order for the employer to act, there must be a documented record. If possible, the investigating Principal/Vice-Principal or Manager/Supervisor should also get written and signed statements from all persons interviewed as possible witnesses. Witnesses should be told that, if the investigation results in disciplinary action, they may be required to give their evidence under oath at any subsequent legal hearing. The witness must be offered the opportunity to read any statement he or she is being asked to sign, and must be given a copy, if requested.

Complainants and witnesses must also be informed that placing the word "confidential" on a document does not guarantee it will not be disclosed. When preparing a document to support a disciplinary investigation, assume it will be disclosed to the person who is the subject of the investigation. At arbitration, for example, a grievor has the right to full disclosure of the Board's case. Statutory protection, but not anonymity, is granted to witnesses to prevent retaliation or harassment, but anonymous complaints cannot be the basis for discipline. As well, in many circumstances, the Municipal Freedom of Information and Protection of Privacy Act entitles an employee to disclosure of personal information on file with the Board.

If necessary, an external advisor, retained by the Board, will work with the Principal/Vice-Principal or Manager/Supervisor and the Supervisory Officer to ensure that files are set up and maintained as appropriate, but also to ensure that necessary documentation/information is placed into a complaint file to support any subsequent legal proceeding (e.g. labour arbitration, professional college, human rights, civil action). At this time, it will be determined which documentation is to be placed in the employee's personnel file.

5. **IMMEDIATE ACTION**

After the complaint is received and an investigation appears warranted, it is important to act promptly. With the passage of time, facts become stale and memories fade.

6. **INTERVIEWING THE EMPLOYEE**

The Principal/Vice-Principal or Manager/Supervisor conducting the interview shall ensure he or she has a second Manager/Supervisor or Principal/Vice-Principal in the room to observe and take notes, and who can attest to the conduct of the interview.

Unionized employees are entitled to union representation in investigation interviews for disciplinary matters. While non-unionized employees have no corresponding right, it is advisable to allow him or her to be accompanied by an individual of his or her choice as an observer.

Generally it is advisable to interview the employee last, when most information has been collected and the direction of the investigation is clear. In some instances, further investigation may result from the employee interview, and a second meeting may be required.

If the Principal/Vice-Principal or Manager/Supervisor expects the interview to result in discipline, or if the nature of the complaint is extremely serious, it is required that the interview take place in the presence of a union representative. When this occurs, the employee should be notified in advance that she/he is being interviewed in order to investigate a possible incident of culpable behaviour. If no representative is present, the meeting should be adjourned immediately, to give the employee the opportunity to obtain union advice and assistance. Do not continue an investigatory interview past the point of knowing discipline will result, unless the union is present.

The Manager/Supervisor or Principal/Vice-Principal should invite the union or federation to attend the investigation meeting. Representatives at an investigation are present to support the employee, but should not be permitted to argue, cross-examine the investigator, confront, interfere or respond for the accused.

It is essential that such meetings be clearly investigative and not inquisitory. No conclusions should be drawn nor criticisms made which would turn the meeting into a disciplinary meeting.

An employee who is the subject of an investigation does not have the same right to remain silent as a criminal accused. The employer has the right to a full accounting by an employee of conduct while at work. The employer has the right to make negative presumptions when an employee refuses to answer questions or to provide information, even where the same conduct may be a matter for criminal investigation, or subject to possible or actual criminal charges.

7. ADMISSIBLE EVIDENCE

Circumstantial evidence can be used to prove "just cause" for discipline if it points to the employee in question and excludes any other person. In labour arbitration, unlike a criminal or court proceeding, hearsay evidence can be used, but cannot form the complete basis for disciplinary response. Hearsay evidence requires some other corroborating evidence. The amount or degree of corroboration depends to some extent on the seriousness of the allegations and the possible scope of the discipline being contemplated. The accepted standard for professional misconduct is 'clear and cogent evidence' of the misconduct at issue, although progressive discipline principles can support employee discharge on a lesser standard if the behaviour is ongoing and evidences a pattern of misconduct or failure to address the issue(s) of concern.

Direct evidence or evidence corroborating hearsay must be first hand and provable by sensory facts. As a witness at arbitration, a supervisor will be asked what he/she personally saw, heard, tasted or smelled. Only witnesses qualified as experts can testify as to their opinion. As an example, an individual witness can say that he or she smelled alcohol on an employee's breath, and can describe the persons' gait, speech pattern or other evidence of possible intoxication, but cannot conclude that the employee was drunk. An expert can introduce and interpret medical, scientific or other evidence to give an opinion that the individual was or was not likely drunk.

Hearsay evidence is second-hand evidence of an individual who did not directly hear or see the conduct at issue, but who may have obtained information or overheard statements from another individual. Although hearsay evidence may be permitted in a labour arbitration hearing or before a tribunal, only direct evidence is generally admissible in a court proceeding. However, hearsay evidence may be permitted in certain circumstances, including if it is part of a routine report made in the course of business or is an admission against interest by the disciplined employee.

8. CONCLUDING THE INVESTIGATION

At the conclusion of the investigation, it must be determined whether culpable behaviour or employee misconduct occurred. In the event that there is insufficient evidence of wrongdoing or it is determined that no discipline is warranted, the documentary record of the investigation must be destroyed.

All parties to the investigation should be apprised of the fact that the investigation is closed.

A complainant is entitled to know whether the complaint was substantiated. If the employee has physically mistreated a child, the parent is also entitled to know whether discipline was imposed, but not necessarily the nature or extent of the discipline. The parent should be made aware that employment sanctions are personal information of the employee and not for public information.

In the event that culpability has been demonstrated, the employee will be informed of the results of the investigation as part of the disciplinary meeting. The employee is also entitled to know if the complaint is not substantiated.

Neither the complainant nor the employee is entitled to the notes or documentation of the investigation. Those notes often contain personal information of third parties or other information not required to be disclosed.

Witnesses will not generally be privy to personal information about the accused or the complainant. However, should the discipline be grieved, they are entitled to be fully informed as to their role in any subsequent proceedings.

APPENDIX B

SAMPLE LETTER OF COUNSEL-Non-Disciplinary

To:

From:

Principal, Burkevale Protestant Separate School

Subject: Investigation Meeting (date)
Letter of Counsel – non disciplinary

Mr./Ms./Mrs.,

This letter is to advise you of the outcome of the investigation meeting that was held (date) where you were represented by _____, ETFO Representative.

Based on the information provided to me, I can conclude that there will be no forthcoming disciplinary action.

However, the following recommendations shall be implemented that are deemed more advisory and supportive in nature.

- That you
- That you

Thank you for providing information that was instrumental in bringing closure to this issue. It is hoped that this non-disciplinary measure serves to remind you of the importance of sound judgement when . . . (e.g. interacting with students, being prompt for assigned duties, etc.)

Principal Name
Burkevale Protestant Separate School

SAMPLE DISCIPLINE LETTER

[Date]

[Name of Employee]
[Home Address]
[City, Prov]
[Postal Code]

Dear **[Name of Employee]:**

Re: [Level of Discipline]

This letter confirms a disciplinary meeting held with you in my office, on [date]. In attendance were **[list name and title of all people in attendance]**.

The disciplinary meeting was a follow-up to the investigation meeting held with you in my office, on **[date]**. In attendance were **[list name and title of all people in attendance]**. At the meeting, we discussed **[state general issue being investigated]**.

On **[date]**, it was reported that you **[cite culpable behaviour]**.

You stated at the meeting that **[cite employee's explanation]**.

On **[date]**, you were given a verbal reminder regarding **[cite culpable behaviour]** as Step one of the progressive discipline process. On **[date]**, you were given a Letter of Expectation as Step two of the progressive discipline process. Despite these prior warnings, you have continued to **[cite culpable behaviour]**.

I am concerned that you continue to **[cite culpable behaviour]**. In the future, it is expected that **[cite expectations]**.

As a result of your conduct, I am issuing this **[level of discipline]** as Step **[cite level of discipline]** of the progressive discipline process. Any further incidents of **[cite culpable behaviour]** may result in further discipline, up to and including termination.

Yours truly,

**[Principal/Vice-
Principal or
Supervisor/Manager]**
[School / Department]

c Supervisory Officer
 Union Representative
 Personnel File

I acknowledge that I have received a copy of this letter of discipline.

[Employee's Name]

[Date]

Professional Advisory

Professional Misconduct of a Sexual Nature

The Council of the Ontario College of Teachers approved this professional advisory on September 27, 2019.

It was originally titled “Professional Misconduct Related to Sexual Abuse and Sexual Misconduct” in 2002 and has been updated to reflect amendments to the College’s legislation.

This advisory applies to all Ontario Certified Teachers (OCTs) including teachers, consultants, vice-principals, principals, supervisory officers, directors of education, those working in non school-board positions, College members in private and independent schools, and those in positions requiring a certificate of qualification.

Read this document in conjunction with College advice on the use of social and electronic media, the duty to report child abuse, bullying, safety in learning environments, and supporting students’ mental health¹.

¹ Use of Electronic Communication and Social Media: [oct.ca/resources/advisories/use-of-electronic-communication-and-social-media](https://www.oct.ca/resources/advisories/use-of-electronic-communication-and-social-media); Duty to Report:

[oct.ca/resources/advisories/duty-to-report](https://www.oct.ca/resources/advisories/duty-to-report);

Responding to the Bullying of Students: [oct.ca/resources/advisories/bullying](https://www.oct.ca/resources/advisories/bullying);

Safety in Learning Environments: A Shared Responsibility: [oct.ca/resources/advisories/safety](https://www.oct.ca/resources/advisories/safety); Supporting Students’ Mental Health: [oct.ca/resources/advisories/mental-health](https://www.oct.ca/resources/advisories/mental-health)

Introduction

This advisory helps OCTs to identify the legal, ethical and professional parameters that govern their behaviour and aims to prevent professional misconduct of a sexual nature with students regardless of consent. It clarifies College members' responsibilities to govern their conduct according to professional standards, provincial law and the *Criminal Code*. The advisory provides guidance and examples. It is not an exhaustive list of unacceptable behaviours.

The *Ontario College of Teachers Act* (OCTA) requires that the College investigate complaints made by a member of the public, a member of the College, the Registrar or the Minister of Education against members about their behaviour, including the alleged sexual abuse of students.

OCTs recognize the trust the public places in them, work to maintain professional relationships with students of any age, and avoid boundary violations.

OCTs are expected to behave professionally at all times. Ignorance of the law or College regulations is not an acceptable excuse for unprofessional behaviour. Engaging in any form of professional misconduct of a sexual nature with students will result in an investigation by the College.

¹O. Reg. 437/97; ontario.ca/laws/regulation/970437

The College's Investigation and Discipline committees may consider this document when reviewing allegations of professional misconduct. The Discipline Committee determines whether particular behaviour constitutes professional misconduct based on the definitions of sexual abuse/misconduct and other types of professional misconduct contained in the OCTA and the Professional Misconduct Regulation².

OCTs should consult their employers' policies to ensure that they know and follow the expectations and obligations in their particular workplaces and communities.

Sexual abuse and sexual misconduct involving a student³

Sexual abuse of a student by a member is defined under the OCTA to mean:

- a) sexual intercourse or other forms of physical sexual relations between the member and the student,
- b) touching of a sexual nature, of the student by the member, or
- c) behaviour, remarks or conduct of a sexual nature by the member, in person or electronically (such as texts and social media), towards the student.

Touching, behaviour or remarks of a sexual nature do not include:

- touching or behaviour that is necessary for the purposes of diapering, toileting, washing or dressing student as part of a teacher's professional responsibilities
- remarks that are pedagogically appropriate (for example, terms commonly used in health classes).
- Sexual misconduct is defined under the OCTA to mean inappropriate behaviour or remarks of a sexual nature by the member, in person or electronically, where,
 - a) one or more students are exposed to the behaviour or remarks, or the member knows or should know that one or more students are likely to be exposed to the behaviour or remarks.

³OCTA, s. 1(1) and (2); ontario.ca/laws/statute/96o12

- b) a reasonable person would expect the behaviour or remarks to:
 - cause distress to students exposed to the behaviour or remarks
 - be detrimental to students' physical or mental well-being, or
 - create a negative school environment for students exposed to the behaviour or remarks.

Often, sexual abuse involves behaviour or remarks of a sexual nature directed at a student or students, whereas sexual misconduct involves behaviour or remarks of a sexual nature that are not directed at a particular student or students.

Building on the Ethical Standards and the Standards of Practice

Ontario Certified Teachers hold a unique position of trust and authority and are responsible for maintaining appropriate professional boundaries with students at all times. OCTs' care for and commitment to students requires that they act in students' best interests.

There is a distinction between the professional and private life of a teacher. OCTs have private lives; however, their off-duty conduct⁴ matters and sound judgment and due care must be exercised in accordance with the Ethical Standards and the *Standards of Practice For the Teaching Profession*.

There are certain behaviours that may not be considered acts of professional misconduct on their own, but combined or repeated may lead to allegations of professional misconduct of a sexual nature. For example, simple texts about

⁴Ross v. New Brunswick School District No. 15, 1996 CanLII 237 (SCC); canlii.org/en/ca/scc/doc/1996/1996canlii237/1996canlii237.html; R. v. Audet, 1996 CanLII 198 (SCC); canlii.org/en/ca/scc/doc/1996/1996canlii198/1996canlii198.html; Toronto Board of Education v. OSSTF, District 15, 1997 CanLII 378 (SCC); canlii.org/en/ca/scc/doc/1997/1997canlii378/1997canlii378.html

Homework or assignments that become longer, personal discussions may show a progression of behaviour that is later judged as professional misconduct. Showing favoritism to a particular student by singling them out or by spending time alone with them or buying them gifts might also be perceived as playing on the student's vulnerability to lay the groundwork for a personal or sexual relationship. A series of seemingly innocent acts may be recognized later as a prelude or intended prelude to sexual abuse or sexual misconduct. This is sometimes referred to as grooming. These types of boundary violations should be avoided.

OCTs should not treat students as friends or peers, engage them in any kind of sexualized manner or attempt to initiate an inappropriate relationship.

OCTs have a responsibility to avoid activities that may reasonably raise concerns as to their propriety. Keeping this in mind can help members protect students by paying attention to interactions with students and noticing when relationships appear to be inappropriate. Early recognition and intervention may prevent complaints to employers or the College.

Duty to Report

Members must take a student's disclosure of abuse or exploitation seriously. By law, OCTs have an ongoing duty to report immediately to a children's aid society if they suspect abuse.⁵ Failure to report can constitute professional misconduct. Reporting only to administrators is not enough. Reports must be made directly to a children's aid society.

Adverse report exceptions

An OCT, subject to the *Teaching Profession Act*, who makes an adverse report concerning suspected sexual abuse of a student by another OCT need not provide that member with a copy or any information about the report.⁶

Ontario Certified Teachers shall not threaten or engage in reprisals against anyone who discloses, reports, or otherwise provides information with respect to alleged or suspected professional misconduct of a sexual nature. Engaging in this behaviour can constitute professional misconduct.

Mandatory penalty provisions

Changes to the OCTA have broadened the types of conduct that result in the mandatory revocation of an OCT's certificate of qualification and registration. By law, a panel of the Discipline Committee must revoke a member's certificate once it has found the member guilty of professional misconduct for engaging in the sexual abuse of a student, a prohibited act of child pornography (accessing, possessing, making, transmitting, distributing or making available), or a prescribed sexual act⁷. Such conduct may also result in criminal consequences. OCTs should be aware of these legislative changes and of the serious consequences for engaging in any form of sexual abuse of a student. There is zero tolerance for the sexual abuse of a student by an OCT.

Sexual

abuse

and the use of social media Electronic communication encompasses social media and other messaging forms that enable users to interact, create, share students and deliver curriculum in innovative and communicate information online.

⁵ *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1, s. 125; ontario.ca/laws/statute/17c14; O.Reg. 437/97, s. 1, para. 27

⁶ *Teaching Profession Act*, R.S.O. 1990, c. T.2, s. 12(2); ontario.ca/laws/statute/90t02

⁷ OCTA, s. 30.2(1) and (2). “Prescribed sexual act” is defined in s. 1(1) to mean “an act of a sexual nature that is prohibited under the Criminal Code...and is prescribed by a regulation made” by the government; ontario.ca/laws/statute/96o12

Used thoughtfully and appropriately, new technologies enable OCTs to model digital citizenship for and engaging ways.

Digital communication can be used to extend and enhance education — or as easily lead to crossed professional boundaries⁸. For example, the immediacy and simplicity of a text message may lead to longer, informal conversations that become personal and intimate. Accordingly, OCTs are urged to keep their online interactions as professional as they would in a classroom.

Inappropriate use of electronic communication and social media can result in criminal charges, conviction and/or civil action. Misuse can also have professional disciplinary consequences. For example, making sexual remarks to a student via social media or sharing sexual content with students online would give rise to the mandatory revocation of an OCT’s certificate of qualification and registration. Similarly, taking pictures or videos of a student that may be judged sexual in nature might result in allegations of sexual abuse.⁹

Employer responsibilities to the College

Employers have mandatory reporting obligations to the College, including when a member has been charged with or convicted of a sexual offence involving students.¹⁰

oct.ca/resources/advisories/use-of-electronic-communication-and-social-media ⁹ *R. v. Jarvis*, 2019 SCC 10 (CanLII); canlii.org/en/ca/scc/doc/2019/2019scc10/2019scc10.html ¹⁰ OCTA, s. 43.3; ontario.ca/laws/statute/96o12

4 PROFESSIONAL ADVISORY: PROFESSIONAL MISCONDUCT OF A SEXUAL NATURE

A Framework for

Self-Reflection

Knowing professional limits and responsibilities

Members need to use their professional judgment and consider the implications and appearance of an action or event thoroughly beforehand. This can be difficult when certain acts seem innocent, but may be determined later as a prelude to sexual abuse or sexual misconduct.

Members must maintain a sense of professionalism at all times — in their personal and professional lives.

When interacting with students, avoid behaviours such as:

- becoming involved in their private lives or allowing them to become involved in your personal life
 - seeing them in private situations. Ensure classroom and office doors are open, that the student is not physically isolated from others, and that your interactions can be observed
 - engaging in favoritism or behaviour that might be perceived as such
 - exchanging notes, comments, emails of a personal or intimate nature¹²
 - following them on social media or allowing students to follow you¹³
 - making telephone calls of a personal nature/providing students with personal contact information/encouraging them to call or video chat¹⁴
 - texting students directly, unless approved by their parents¹⁵ and your employer
 - engaging in personal communications outside school hours or frequently
 - exchanging personal photographs via social media or otherwise¹⁶
 - asking students to keep certain things secret from their parents or other staff
 - exchanging money or personal gifts¹⁷
 - using terms of endearment or pet names¹⁸
 - meeting outside of school for non-related school events and/or unapproved purposes
 - hiring students for babysitting, building and agricultural work or similar activities unless approved by parents and consistent with employer policies
 - tutoring or providing lessons (for example, music, dance) outside school unless approved by the student's parents and consistent with employer policies
 - making sexually suggestive comments
- A member allowed a female student to listen to music and eat food, privileges not given to other students

A member sent a student text messages in which he discussed his wife and daughter and sent photos of what he was doing while his wife was away

¹³ In one case, a member opened a social media account, accepted student followers, and then posted an inappropriate joke, which was seen by one of the student's parents

¹⁴ For example, a member in one case exchanged cell phone numbers with a student to text and call each other

¹⁵ In this advisory, 'parent' means the student's parent, legally appointed guardian, or any person in a custodial role such as adoptive parent, step-parent, or foster parent.

¹⁶ For example, a member sent a student naked images and videos of himself and asked the student to send him sexually explicit photos

¹⁷ For example, a member gave his student a scarf, a shirt, a watch, and a birthday card with chocolate ¹⁸ In a 2014 case, a member called his student "hon" or "cutie pie"

- commenting on physical appearance¹⁹
- making comments that suggest a future romantic relationship²⁰
- inviting individual students to your home²¹
- dating students
- sharing sexually explicit texts or images, including those of children
- making physical contact of a sexual nature or contact that might be perceived as sexual or intimate (for example, tickling, rough housing, kissing, hugging and/or massaging).

Ask yourself:

1. Is your conduct in the best interests of the student and connected to your professional duties?
2. Are your activities known to and/ or approved by supervisors and/or parents?
3. Are you using board/employer approved communication platforms and following approved policies?
4. Are you working with students in areas that can be observed by others (that is, not behind closed doors)? Is a third party present or aware of the meeting?

Conclusion

Sexual innuendoes, comments, touching or sexual relations with students are prohibited and subject to professional discipline and criminal consequences. Know your employer's policies, protocols and expectations. When in doubt, consult your direct supervisor.

OCTs are professionals who understand, value and protect the trust that exists with students and who always maintain appropriate professional boundaries.

Therapy and Counseling

As of January 1, 2020, the College will provide funding for therapy and counseling for student victims of sexual abuse or a prohibited act involving child pornography.

5. Do I know what my employer's policy is with respect to getting help for vulnerable students and am I mindful of the need to respect professional boundaries?
6. Are you transporting students in emergency circumstances only?
7. Would your actions contribute to their level of discomfort or pose a risk to the personal integrity or security of a student?
8. Can your actions reasonably be regarded as conduct that maintains your professional relationship with your students?

¹⁹In another case, a member told a student she was "going to do fine [on an exam], just like you look, fine", used a rating scale to describe her appearance and said she looked "beautiful"

²⁰In one instance, a member told a student, "I can't wait to get alone with you" and "oh the things I would do to you". In another case, the member suggested to the student that they marry, build a house and move to a country with a lower legal marriage age

²¹For example, a member invited students to his home for popsicles and to carve pumpkins