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20 September 1990

Attention: Sister Marie Therese Harold

Rev Father T M Doyle
 Director
 Catholic Education Office of Victoria
 383 Albert Street
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Dear Father

CEO Policy on Dealing With Suspected Child Abuse by Teachers

We refer to the conference held at the Catholic Education Office on 12 September 1990 to discuss your Office's policy on dealing with allegations of child abuse against teachers and other school staff.

We confirm our advice as follows:

- The expression "child abuse" is applied to a range of unacceptable behaviour of differing degrees of seriousness. The expression includes psychological or physical mistreatment but our advice was given in the context of child sexual abuse. Even in this context the expression embraces a range of behaviour, some more serious than others. However, persons who are responsible for the care and custody of children are required to treat all allegations of child abuse with the utmost seriousness. This requirement coupled with the understandably emotive nature of the issue makes it difficult to set down hard and fast rules for dealing with allegations against teachers. Each case must be dealt with on the basis of its own

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circumstances, and our advice is intended only to lay down general guidelines.

2. Where an allegation of child abuse is made against a teacher, the school should investigate the matter itself to the extent necessary to decide whether the allegation has some foundation.
3. It is not mandatory that an allegation of child sexual abuse be reported to the police but in our view the school should report the matter to the police immediately if it forms the view on reasonable grounds that the allegation may be true. Under the *Community Welfare Services Act* a person reporting suspected child abuse in good faith upon reasonable grounds of suspicion has a statutory indemnity from all actions for damages or other legal proceedings arising out of the notification.
4. If, on reasonable grounds, the school forms an apprehension that the safety or welfare of children is at risk by continued contact with the teacher, steps should be taken immediately to prevent the teacher having further contact with children. The overriding consideration on this issue should be the welfare of the children. In our view this should take precedence over the interests of the teacher.
5. Several alternative steps may be taken to remove a teacher from contact with children:-
 - (a) the teacher may be transferred to other duties;
 - (b) the teacher may be suspended;
 - (c) the teacher may be dismissed;
 - (d) the teacher may resign; and
 - (e) the teacher may agree to take unpaid leave of absence.

Which of these courses is adopted will depend on the circumstances of each case.

6. There will be some cases, for example, where a teacher is caught in the act of child sexual abuse or admits an allegation or is found guilty of an offence, which warrant summary (immediate) dismissal on the basis of misconduct. Most cases, however, are not clear-cut.
7. In this context, it is necessary to observe that the interests of the school and the police do not necessarily coincide. A school is entitled to dismiss a teacher in cases of this kind even where no charges are laid by the police or, where charges are laid, the teacher is not convicted or acquitted. The procedures of the criminal law must be viewed separately from the employment law issues. The police and Director of Public Prosecutions have to decide if a crime has been committed and make judgments about laying charges having regard to a number of factors, including the strict rules of evidence applicable in criminal courts. Criminal trials are conducted in

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accordance with these rules and guilt must be established beyond reasonable doubt. The onus of proof on the police is a heavy one.

8. Employers are not expected to have to satisfy this heavy onus in taking dismissal action. In reaching a decision the school is required to consider a range of other factors including:
- (i) the welfare of the children,
 - (ii) the proper functioning of the school,
 - (iii) the legitimate concerns and expectations of parents,
 - (iv) the religious values of the school and its community,
 - (v) the rights and obligations of the teacher, and
 - (vi) industrial relations implications of its decisions.

In our view, the onus on the school in considering a teacher's position in cases of this kind is to objectively assess the facts as far as they can reasonably be ascertained and to then to act reasonably having proper regard to all of the competing issues. A school employing authority is likely to experience difficulty where it acts without having any proper idea of the facts or where it ignores or takes undue account of one or other of the competing factors.

9. If a school is satisfied that a teacher must be removed from contact with children and the teacher cannot be transferred and will not resign or take unpaid leave, the school has only two options: it must dismiss the teacher or suspend the teacher with pay. An employer does not have the right to suspend an employee without pay.
10. While dismissal may be said to be a harsh decision because the teacher is presumed by the criminal law to be innocent until proven guilty, there are practical difficulties associated with suspension on full pay pending the resolution of criminal proceedings.
11. Police investigations generally and, in our experience, cases of this kind in particular, can take a considerable time to be finalised. It may be many months before the police decide whether there is sufficient evidence to lay charges. If charges are laid there can be even longer delays in the matter coming before the courts for trial. Thus, if a teacher is suspended on full pay pending the investigation of allegations of child abuse a considerable financial burden can be placed on the school's resources.
12. The decision to terminate a teacher's employment in these circumstances requires the school to make decisions about, first, whether the teacher has engaged in conduct which is

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unacceptable and, secondly, whether the teacher's continued employment at the school is viable in all the circumstances, irrespective of whether the teacher is charged with a criminal offence, or found guilty.

13. Apart from situations of misconduct which warrant summary dismissal, a school would have to terminate on notice after having regard to the "due process" provisions of the award. What is "due process" in these cases will depend on the circumstances. In such cases, the school should accord natural justice to a teacher by advising the teacher of the allegation in sufficient detail as to enable a properly considered response (the circumstances will dictate whether the name of the child(ren) concerned should be revealed) and giving him/her the opportunity to explain the conduct.
14. The investigation and due process stages can occur while the teacher is suspended with pay.
15. Dismissal, with notice, would be justified if the school was satisfied on reasonable grounds that the continued employment of the teacher would have a significant adverse effect on the proper functioning of the school. This may be so because of:-
 - (i) the hostile attitude of parents;
 - (ii) apprehension or distrust of the teacher on the part of some children; or
 - (iii) a reasonably held belief by the school that the teacher has engaged in, or is likely to engage in, unacceptable behaviour towards children.
16. At all stages of an investigation, we recommend that care be taken to protect the names of students and teachers. The nature of any investigation should be kept confidential to protect the reputations of all concerned and to avoid the possibility of defamation proceedings.

We regret that we cannot be more definitive in our advice but the nature of this type of allegation dictates that each case be considered in light of its special circumstances. If we can be of further assistance, please do not hesitate to contact us.

Yours faithfully
MINTER ELLISON

