



Child Protection Policy

Allegations Against Employees

Child Protection Policy: Allegations Against Employees

Context

We recognise that the safety, welfare and wellbeing of young people is paramount. This policy reflects the legislative requirements of our community language school to respond to allegations of a child protection nature against employees. We have an obligation to ensure allegations of a child protection nature are addressed and properly handled.

Legislative Provisions

Children and Young Persons (Care and Protection) Act 1998

<https://www.legislation.nsw.gov.au/acts/1998-157.pdf>

Crimes Act 1900

<https://www.legislation.nsw.gov.au/#/view/act/1900/40>

Privacy and Personal Information Protection Act 1998

<https://www.legislation.nsw.gov.au/#/view/act/1998/133>

Child Protection (Working With Children) Regulation 2013

http://www.austlii.edu.au/au/legis/nsw/num_reg/cpwca2012cpwcr20132013156l26a2013951.pdf

Ombudsman Act 1974, Part 3A; January 2014

<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+68+1974+cd+0+N>

Procedures for the Management of Less Serious Allegations in the Area of Child Protection Against an Employee

Reportable Conduct

Concerns related to child protection involving a staff member employed in a child-related role are referred to as an allegation of Reportable Conduct and are handled in accordance with requirements of the NSW Ombudsman Act and the NSW Commission for Children and Young People Act.

Reportable Conduct under the Ombudsman Act 1974 refers to the following:

- Any sexual offence or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence or an offence involving child abuse material [within the meaning of Division 15A of Part 3 of the Crimes Act 1900]); or
- Any assault, ill treatment or neglect of a child; or
- Any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to the following:

- Conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children, and to any relevant codes of conduct or professional standards;
- The use of physical force that, in all the circumstances, is trivial or negligible. Reportable conduct applies only if the physical force is going to be investigated and the result of the investigation recorded under workplace employment procedures; or
- Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under Section 25CA.

NOTE: Examples of conduct that would not constitute reportable conduct include (without limitation) touching a child in order to attract a child's attention, to guide a child or to comfort a distressed child; and conduct that is established to be accidental.

Procedures

1. Employees report to the Principal/CEO all allegations when there are reasonable grounds to suspect risk of harm to a child or young person. This must be done to meet mandatory reporting obligations.
2. The Principal/CEO will clarify the issues involved.
3. The Principal/CEO will conduct an initial risk assessment to determine whether there is any immediate risk of harm to the child/ren and whether any action should be taken to reduce that risk. This might include, for example, providing more direct supervision, moving the employee to a position with non-child contact, or suspending the employee with pay.
4. The Principal/CEO will assess any other risks including:
 - Risk to the employee who is the subject of the allegations;
 - Possible risk to other staff;
 - Risk to the organisation itself.
5. The Principal/CEO will notify the statutory and regulatory authorities
6. The Principal/CEO will plan the scope of the investigation.
7. The Principal/CEO will gather information from relevant sources.
8. The Principal/CEO will inform the employee that a complaint has been made and, at an appropriate time, provide the employee with details of the allegation to enable them to provide a response either in writing or at interview.
9. The Principal/CEO will analyse all relevant information before making a finding.
10. The Principal/CEO will prepare an investigation report documenting reasons for decisions and recommendations regarding findings.

11. Forward the report inclusive of recommendations to the Board/Management Committee.

Where there is actual or perceived conflict of interest of both parties, the Principal/CEO will appoint an impartial person (who may or may not be an employee) with sufficient skills and experience to undertake the investigation.

Procedural Fairness

Principles of procedural fairness (or 'natural justice' as it is otherwise known) will be strictly followed. The process will be transparent, accountable and treated as highly confidential in order to protect the alleged victim, the person making the allegation and the employee.

Employees are entitled to have:

- i. A fair hearing;
- ii. An impartial decision;
- iii. A decision based on evidence.

Findings

Findings that are available to be made in relation to each allegation are as follows:

- i. Sustained (i.e. a finding that the conduct occurred); or
- ii. Not sustained – insufficient evidence (i.e. there is insufficient evidence available to reasonably establish that the alleged conduct did occur); or
- iii. Not sustained – lack of evidence of weight (i.e. there is no evidence of weight that the reportable conduct occurred); or
- iv. False (i.e. where there is clear evidence to show the conduct did not occur).

Findings made in relation to allegations must be supported by evidence and the civil standard of proof applies, that is, upon the 'balance of probabilities'. This means that it must be more likely than not that the allegation is true in order to sustain an allegation. However, if the consequences of making a finding against the employee are serious (e.g. dismissal) then the standard of proof required would necessarily be higher.

Outcomes of an Investigation

Possible outcomes of an investigation may be:

- No adverse outcome—resolution of the issue;
- Informal performance discussion;
- Performance improvement plan;
- Disciplinary action, including caution, formal warning or termination;
- Internal risk management actions such as systems improvement and/or professional development for staff.

Appendix One

Sample Script for Principal/CEO Discussion with Staff Member

Introduction to the incident	I need to talk to you about a confidential matter and you may like to have a support person present. (Name of staff member), a concern has been raised with me about an incident, which may have occurred. (State date and time of alleged incident)
Detail of conduct	The concern is that (details of alleged behaviour including detail of place, time and names of people involved etc. N.B. the identity of the complainant is not to be divulged)
The procedures: a) Clarification of issues	In order to manage locally, the issues have to be clarified. To do this I may need to speak to other students, parents, other staff and yourself. I will determine the appropriate method of local management.
b) Copies	A copy of any report will be provided for you and you, of course, have a right to make a comment about any aspect of local management that is implemented.
c) Time	The matter can be dealt with speedily and the whole context of any incident, which may have occurred, can be taken into account.
Support available	We will provide you with support here and you can also seek support from your union.
Collecting information	If we decide that we can manage the matter this way, I would like to clarify what in fact are the issues in the present circumstances. To do this I may need to speak to students, parents or other staff.
Staff member's involvement	After I do that, I'd like to give you an opportunity to provide information or comment either verbally or in writing on any identified issue. You can bring a person to support you at any meeting with me if you wish.
Action	I'll be in a position then to provide a report on the matter. This will record my actions.

Process Flowchart

