



## **Procedures for Handling Allegations of Staff Misconduct and Reportable Conduct**

### **Introduction**

Complaints regarding allegations of staff misconduct and reportable conduct are managed in a different manner to other complaints received by the School. This is because often these complaints are of a sensitive nature and raise potential privacy and confidentiality issues.

### **Purpose and Objectives**

The School requires all staff to comply with a Code of Conduct and standards of behaviour that are intended to prevent staff misconduct and reportable conduct, and staff are encouraged to report any breaches of the Code or standards. It is also critical that the broader School community reports staff misconduct and reportable conduct (both defined below) to ensure the safety and wellbeing of students, and that the School complies with its legislative reporting obligations. The School has a legal obligation to investigate and report to the NSW Children's Guardian all allegations of reportable conduct made against staff at the School as defined by the Children's Guardian Act 2019 (Children's Guardian Act).

### **Scope**

For the purposes of this Policy, "staff" and "staff member" is defined to include teaching and non-teaching staff, Board members, volunteers, contractors and external providers.

### **Policy**

All complaints and grievances raised by students and/or parents either communicated in writing or verbally will be treated seriously and as far as possible in accordance with the following:

- a) All complaints/grievances will be investigated. This will generally involve speaking to the person about whom the complaint is made and perhaps others. The School will try to keep the matter confidential to the extent practicable.

- b) If a complaint is upheld, the School will take whatever action it considers appropriate.
- c) The Head of School will notify the Ombudsman within 30 days of any allegation made by students and parents that is deemed to be reportable.
- d) If a complaint is made by students and/or parents and there is any evidence that the child may be “at risk of harm” the matter will be reported to the FACS.
- e) If there is alleged criminal offence the matter will be reported to the police.

## **Procedures**

### Making a Complaint or Allegation of Staff Misconduct or Reportable Conduct

If you would like to make a formal complaint or allegation of staff misconduct or reportable conduct, you can do so by:

1. Sending an email to executive@pal.nsw.edu.au
2. Writing a letter to the School addressed to the Head of School
3. Telephoning the School and asking to speak to the Head of School

If the Head of School is the subject of your complaint or allegation of misconduct or reportable conduct, please contact the Board Chairman.

### Investigating and Managing Staff Misconduct and Reportable Conduct

The School initially investigates all complaints and allegations to determine whether the conduct in question amounts to staff misconduct, as defined in this Policy, or reportable conduct that must be further investigated and reported to the NSW Children’s Guardian. All investigations uphold the principles of procedural fairness and confidentiality - information is only shared with those who need to know.

#### *Staff Misconduct*

When a complaint or allegation does not include conduct that is defined as reportable conduct following the School’s initial investigation, and it is determined through the School’s investigation that staff misconduct has occurred, the School will notify the complainant of the finding and corrective actions that will be taken. Staff misconduct is managed through our Human Resources policies and procedures relating to internal grievances, discipline and termination.

#### *Reportable Conduct*

After the Head of School becomes aware of a reportable allegation or conviction against an employee they **must** ensure that an appropriate investigation of the reportable allegation or conviction is conducted and completed within a reasonable time.

The Head of School **must** notify the Children's Guardian of the findings of the School's internal investigation into the matter within seven (7) days.

The Head of School **must** inform the affected child and their parents/carers about any reportable conduct investigation unless it is "not in the public interest" to inform them.

Sometimes, where reportable conduct obligations arise, the School will also have other mandatory reporting obligations. In these situations, the School will prioritise its procedures for mandatory reporting to the Department of Communities and Justice and/or to Police and will seek advice from those agencies on the best way to proceed with the reportable conduct internal investigation.

### Making a Finding of Reportable Conduct

If the School's internal investigation results in a finding of reportable conduct, following the School's notification to the NSW Children's Guardian, we will conduct a final risk assessment of the conduct, the staff member and the circumstances, and take action to mitigate ongoing risks.

### Disclosing Information to the School Community

A parent or carer has a legitimate interest in being told of the process that is being followed to investigate an allegation that their child was a victim of staff misconduct or reportable conduct.

Section 57 of the Children's Guardian Act imposes disclosure obligations and prohibitions on the Head of School.

The disclosure obligations and prohibitions apply to information about a reportable conduct investigation. This includes information about the progress of an investigation, the findings and any action taken in response to the findings.

The Head of School or an investigator working for the Head of School **must** inform the affected child and their parents/carers about the reportable conduct investigation unless it is "not in the public interest" to inform them.

The Head of School or an investigator working for the Head of School **must not** disclose information about a reportable conduct investigation to anyone other than the affected child and their parents/carers. However, there are some exceptions to this rule. Disclosures can be made to certain

people and entities, such as investigators and carers, if the disclosure is made to promote the safety or wellbeing of the child.

### Investigation principles

The School will:

- (a) be mindful of the principles of procedural fairness;
- (b) inform the person subject of the allegation (PSOA) of the substance of any allegations made against them and provide them with a reasonable opportunity to respond to the allegations;
- (c) make reasonable enquiries or investigations before making a decision;
- (d) avoid conflicts of interest;
- (e) conduct the investigation without unjustifiable delay;
- (f) handle the matter as confidentially as possible; and
- (g) provide appropriate support for all parties including the child/children, witnesses and the PSOA.

### Investigation steps

In an investigation the Head of School or appointed investigator will generally:

- (a) interview relevant witnesses and gather relevant documentation;
- (b) provide a letter of allegation to the PSOA;
- (c) interview the PSOA;
- (d) consider relevant evidence and make a preliminary finding in accordance with the NSW Ombudsman and NSW Office of Children's Guardian (OCG) guidelines;
- (e) inform the PSOA of the preliminary finding and provide them with an opportunity to respond;
- (f) consider any response provided by the PSOA;
- (g) make a final finding in accordance with the NSW Ombudsman;
- (h) decide on the disciplinary action, if any, to be taken against the PSOA;

- (i) apply the NSW Office of the Children's Guardian (OCG) Guidelines and decide if the matter is reportable to the OCG; and
- (j) send the final report to the Ombudsman and report to the OCG (where required).

The steps outlined above may need to be varied on occasion to meet particular circumstances. For example it may be necessary to take different steps where the matter is also being investigated by FACS or the NSW Police.

A PSOA may have an appropriate support person with them during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

### Risk Management

The Head of School is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

#### *Initial risk assessment*

One of the first steps following an allegation of reportable conduct against an employee is for the Head of School to conduct a risk assessment. The purpose of this initial risk assessment is to identify and minimise the risks to:

- (a) the child(ren) who are the subject of the allegation;
- (b) other children with whom the employee may have contact;
- (c) the PSOA;
- (d) the School, and
- (e) the proper investigation of the allegation.

The factors which will be considered during the risk assessment include:

- (a) the nature and seriousness of the allegations;
- (b) the vulnerability of the child(ren) the PSOA has contact with at work;
- (c) the nature of the position occupied by the PSOA;

- (d) the level of supervision of the PSOA; and
- (e) the disciplinary history or safety of the PSOA and possible risks to the investigation.

The Principal will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties, being required not to have contact with certain students, or being suspended from duty. When taking action to address any risks identified, the School will take into consideration both the needs of the child(ren) and the PSOA.

**Please Note:** A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is completed and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

#### *Ongoing Risk Management*

The Head of School will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

#### *Risk Management at the Conclusion of the Investigation*

At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by the Head of School regarding what action, if any, is required in relation to the PSOA, the child(ren) involved and any other parties.

### **Implementation**

The School Governing Authority and authorised delegates share responsibility for the effective implementation of this Policy.

### **Breach of this Policy and Procedures**

As a result of the allegations, investigation or final findings, the School may take disciplinary action against the person subject of the allegation (PSOA), including termination of employment.

In relation to any disciplinary action the School will:

- (a) give the PSOA details of the proposed disciplinary action; and
- (b) give the PSOA a reasonable opportunity to respond before a final decision is made.

## Definitions

Term	Definition
Staff Misconduct	<p>The School defines “staff misconduct” as conduct by a staff member that:</p> <ul style="list-style-type: none"> <li>• breaches the School’s Code of Conduct or other key policies/procedures</li> <li>• displays purposeful neglect of duties/responsibilities</li> <li>• involves alcohol and/or other substance abuse</li> <li>• is physically, verbally or emotionally abusive</li> <li>• endangers the safety or wellbeing of students or others at the School.</li> </ul>
Reportable Conduct	<p>The Children’s Guardian Act defines reportable conduct as including:</p> <ul style="list-style-type: none"> <li>• any sexual offence or sexual misconduct, committed against, with or in the presence of a child (including child pornography offences or an offence involving child abuse material) including grooming behaviours</li> <li>• any assault, ill-treatment or neglect of a child</li> <li>• any behaviour that causes significant emotional or psychological harm to a child.</li> </ul> <p>Some examples of conduct that would <b>not</b> constitute reportable conduct include touching a child to get their attention, guide them or comfort them, a teacher raising their voice to attract attention or restore order in a classroom, or conduct that is established to be accidental.</p>

## Source of Obligation

- Children’s Guardian Act 2019
- Registered and Accredited Individual Non-Government Schools Manual, 3.6.1

## Related Policies and Procedures

Appendix A: **Determining if an allegation is a reportable allegation**

Appendix B: **Procedure for Planning and Conducting an Investigation**

## Appendix C: **Student Grievance Resolution Procedure**

### **References**

The NSW Children's Guardian provides information on reportable conduct and the School's obligations to report. For more information about the School's policies and procedures relating to staff misconduct, reportable conduct or complaints handling generally, please contact the School.

### **Policy History and Schedule**

Last reviewed by H Lam (Head of School) in March 2023.