

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.

Kindlehill 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. Kindlehill has a legal obligation to investigate and report to the Office of Children's Guardian all allegations of reportable conduct made against staff at the School as defined by the Children's Guardian Act 2019 (the Act).

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.

Definition of Staff Misconduct

The School defines "staff misconduct" as conduct by a staff member that:

- breaches the School's Code of Conduct or other key policies/procedures
- displays purposeful neglect of duties/responsibilities
- involves alcohol and/or other substance abuse
- is physically, verbally or emotionally abusive
- endangers the safety or wellbeing of students or others at the School.

Definition of Reportable Conduct

Section 20 of the Children's Guardian Act 2019 defines reportable conduct as:

- a sexual offence
- sexual misconduct
- ill-treatment of a child
- neglect of a child
- an assault against a child
- an offence under section 43B (failure to protect) or section 316A (failure to report) of the Crimes Act 1900; and
- behaviour that causes significant emotional or psychological harm to a child.

Some examples of conduct that would not 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. The School closely follows the Office of the Children's Guardian guidance on this issue provided in the [Identifying reportable allegations fact sheet](#).

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 the Principal.
2. Writing a letter to the School addressed to the Principal.
3. Telephoning the School and asking to speak to the Principal.

If the Principal is the subject of your complaint or allegation of misconduct or reportable conduct, please contact a member of the board who has no conflict of interest to the Principal or Child Protection Officer.

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 Office of Children's Guardian. All investigations uphold the principles of procedural fairness and confidentiality – information is only shared with those who need to know. The School closely follows the Office of the Children's Guardian guidance on this issue provided in the [Recognising and managing conflicts of interest fact sheet](#).

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 policies and procedures relating to internal grievances, discipline and termination.

Reportable Conduct

When a complaint or allegation does include conduct that is defined as reportable conduct following the School's initial investigation, the School is required by law to report the allegation to the Office of the Children's Guardian within seven business days after becoming aware of the allegation or conviction. The School also will conduct an initial risk assessment before notifying the Office of the Children's Guardian to provide information about how risks are being managed.

The School must conduct an internal investigation, led by the Principal or an accredited investigator and provide a finalised report or an interim report on the status of the investigation to the Office of the Children's Guardian within 30 calendar days. When conducting an internal investigation, the School follows the NSW Reportable Conduct Scheme's [Practice Guide: Planning and Conducting an Investigation](#).

In cases where a child is at immediate risk of serious harm, the School has a duty to take prompt and decisive action to manage those risks. That may mean taking immediate steps to cease and prevent further contact between the staff member and the child who is the alleged victim of reportable conduct or any other children. It may also involve securing forensic evidence.

If a reportable allegation requires a report to Police, this will be the first step taken after addressing any significant risk to children or the investigation. If Police are conducting inquiries, the School will

consult with the police officer in charge about any proposed action, including risk management action.

If a mandatory reporter has reasonable grounds to suspect that a child or children are at risk of significant harm, the School must immediately make a mandatory report to the Child Protection Helpline of the Department of Communities and Justice (DCJ).

After making any mandatory reports to Police and DCJ, if the allegation constitutes a reportable allegation, the School is required to notify the Office of the Children's Guardian within 7 business days of becoming aware of the reportable allegation.

Risk management following a reportable allegation

The School is responsible for ensuring that any risk to a child(ren) is assessed and managed while responding to reportable allegations. This process includes:

- an initial risk assessment on receipt of a reportable allegation based on all relevant information known at that time
- the risk assessment will be revisited and where appropriate adjusted during the investigation, as new information becomes known; and
- a final risk assessment will be undertaken at the end of the investigation.

When conducting the risk management, the School follows the NSW Reportable Conduct Scheme's guidance provided in the [Risk management following a reportable allegation fact sheet](#).

Making a Finding of Reportable Conduct

The investigation process aims to gather and examine information to establish facts and make findings in relation to reportable allegations. Regardless of the findings about the reportable allegation, the School is required to advise the Office of the Children's Guardian of the final actions it has taken, or will take, as a result of the investigation and the reasons for taking that action (or taking no action). To this end, the School will clearly document the analysis of how the evidence supports the findings and how the evidence has informed the final risk assessment and decision-making around action. When making a finding, the School must have regard to certain mandatory considerations outlined in the Act and also the principles of procedural fairness.

Once the final decision is made, the staff member will be informed in writing. They will also be informed of any relevant consequences and of any internal review or appeal options available to them.

When making a finding, the School follows the NSW Reportable Conduct Scheme's guidance provided in the [Making a finding of reportable conduct fact sheet](#).

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.

Information can often be provided to the parent, carer or child without the need to consider legal impediments to disclosure. However, legal impediments – real or feared – may discourage the timely and appropriate release of information, particularly in the case of reportable conduct allegations.

The School closely follows the Office of the Children's Guardian guidance on this issue provided in the [Disclosing information to children' parents and carers fact sheet](#).

Under section 57 of the Act, the School must disclose relevant information to:

- a child to whom the information relates,
- any parent of the child,
- if the child is in out-of-home care, any authorised carer of the child.

There are times when it may be appropriate to disclose information about the internal investigation to one of these involved parties but not another, for example, to disclose information to the child's parent, but not the child.

The School is permitted to disclose the following information to involved parties:

- information about the progress of an investigation,
- the findings of the investigation,
- any action taken in response to those findings,

however it considers all the circumstances of the complaint/allegation and investigation when determining if information should be disclosed.

Where to Find More Information

The Office of the Children's Guardian has several informative fact sheets on the topic of 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 Deputy Principal.