

CHILD PROTECTION POLICY

Purpose

This Policy articulates the School's approach to the important issue of child protection.

The focus of this School's duty of care is the protection of children from harm. This School cares for children, it must act in the best interests of the children in its control at all times and take all reasonable steps to ensure the safety of those children in the context of the School's educational activities.

The damaging consequences for a child, their future life and the impact upon their family as a result of harm they suffer at the hands of others and particularly by those in positions of trust are immeasurable. This School will seek to prevent any form of child abuse being experienced by a child in its care.

A failure by the School or members of its Community in addressing such child protection matters will mean a child has suffered and the School's standing in the community generally will have diminished. Every reasonable measure will be taken by the School to prevent this happening. The School will continue in its efforts to promote strategies for prevention among its students, staff and Community generally.

The School requires the support of all members of its Community to assist it in achieving these aims.

This Policy is provided to all staff members upon their appointment

Roles and Responsibilities

School

Should the School need to respond to allegations of this nature then the procedures followed by the School will be in accordance with all relevant legislation, and will take into account other appropriate practices and guidelines aimed at the protection of children. This Policy and associated detailed procedures will be amended from time to time to take into account amendments to legislation and regulations.

The School has responsibilities to several NSW Government agencies in meeting its legal obligations. These are the NSW Ombudsman, Community Services, and Office of the Children's Guardian. A summary of these responsibilities and the role each of these agencies plays is also contained in this Policy. In dealing with child protection matters the School's management will liaise with each of these authorities as well as seeking advice from the police, School Council's solicitors and the Association of Independent Schools (NSW) as necessary.

Principal

The Principal as Head of a designated non-government agency is required to respond to all allegations against employees. Reportable allegations and convictions are to be notified to

the Ombudsman within 30 days of the Principal becoming aware of such allegations or convictions

The Principal, or his nominee, should conduct investigations (which can include preliminary or other inquiries and assessments) into all allegations or convictions and take appropriate action as a result, including reporting to the Ombudsman's office, as well as possibly the Office of the Children's Guardian, the outcome of the School's investigation into a reportable allegation or conviction.

Should the Principal receive notice of allegations against any employees his responsibility is to either respond to such allegations or arrange for a response from an appropriate senior staff member.

The Principal will be mindful of the School's "*Code of Conduct*" that outlines appropriate and inappropriate behaviour to assist staff and others to better understand the School's expectations in respect of its aim to eliminate any harm coming to children in its care.

The Principal is responsible for ensuring systems are in place for recording and responding to all allegations or convictions against an employee, including matters that are required to be notified to the Ombudsman, the Office of the Children's Guardian and Community Services.

Ombudsman

The Ombudsman's child protection role is to:

- scrutinize the School's child protection systems that seek to prevent and then respond to allegations and convictions of reportable conduct against employees;
- monitor the School's investigations into an allegation of reportable conduct against an employee, and if necessary undertake direct investigations into such allegations;
- respond to complaints about any inappropriate response by the School to an allegation or conviction of reportable conduct against an employee.

The Office of the Children's Guardian (OCG)

The OCG is responsible for the employment screening for child related employment in accordance with the Child Protection (Working with Children) Act 2012. A Working with Children Check is a prerequisite for anyone in child-related work. It involves a national criminal history check and review of reported workplace misconduct findings. The result of a Check is either a clearance to work with children for five years, or a bar against working with children. Cleared applicants are subject to ongoing monitoring by the OCG, and any relevant new records which appear against a cleared applicant's name may lead to the Check being revoked.

Please refer to the <http://www.kidsguardian.nsw.gov.au/Working-with-children/working-with-children-check> for further information on the new Working With Children Check that commenced on 15 June 2013. In summary, all School staff commencing since that date are required to obtain a Check under the new system before they commence duties. All existing staff employed by the School since 2000 and prior to that date have had a

Check under the previous screening system. All staff will eventually need to obtain a Check under the new system within a phasing in period described on the above web site.

The OCG also receives notification of sustained findings of serious physical assault and sexual misconduct and convictions involving children against employee.

Community Services (CS)

Community Services (previously known as the Department of Community Services) is a division of Family and Community Services and has a broad role to play in the protection of children within our society and significant investigative powers to enable it to discharge its responsibilities.

As mentioned elsewhere in this Policy document, the School's Principal has a clear obligation under the Children and Young Persons (Care and Protection) Act 1998 to report to CS any child which is considered to be at risk of significant harm and to assist that agency with its investigations.

As mandated employees under relevant legislation, teaching staff will discharge their obligation to report children at risk of significant harm to CS by conveying the information upon which they base their concerns to the Principal who is in turn obliged to inform CS.

CS will acknowledge safe receipt of notifications to its Helpline (133627) and assign a case worker and reference number to the matter being reported.

Located at www.keepthemsafe.nsw.gov.au is an online interactive "Mandatory Reporter Guide" (also known as a decision tree) that will assist the School to determine if a child should be reported as being at risk of significant harm to Community Services.

Staff Member

As a member of staff of this School, your responsibility is to report to the Principal or to the Principal's nominee any situation where:-

- a) you are aware that there has been an allegation of reportable conduct; or
- b) you have formed a belief on reasonable grounds that a child is in danger of being subject to reportable conduct; or
- c) a child is at risk of significant harm.

It is important to realise that failure to report allegations of reportable conduct or a suspicion of reportable conduct against a child who is under 16 years of age, based on reasonable grounds, is possibly an offence under Section 316 of the NSW Crimes Act.

As a member of the School's staff you are not to investigate allegations or suspicions of reportable conduct. Investigations must only be carried out by investigators specifically appointed for the purpose.

Your responsibility is to report any allegations or evidence of reportable conduct only to the Principal or his nominee and discussion with others should be avoided or limited to persons in your privileged communication path (normal reporting line). **Failure to limit your communication in this way will not only be a breach of this Policy, but may result in you not being protected under the law (Section 29 Children and Young Persons (Care and Protection) Act 1998) from potential civil proceedings for defamation.**

The Principal or his nominee will report any matter that has been notified, as required by the relevant legislation and the Memorandum of Understanding mentioned in the Legislative Requirement section below.

You will be advised of the action taken. If it is decided that there are not “reasonable grounds to suspect” a child is at risk of significant harm and consequently the matter is not going to be reported by the Principal, you, as the original notifier, will have an obligation under the legislation to report to CS (Helpline 133627) if you believe that reasonable grounds exist.

If a student discloses reportable allegations to you, you are obliged to report the disclosure as stated above but you must **not** investigate the matter. You should refer to the “*Guidelines for Assisting a Child who has Disclosed Reportable Allegations*”.

Investigation of allegations or evidence of reportable conduct must only be carried out by appointed investigators whose duties will include informing parents or caregivers that a notification has been made. You should not make any contact with parents or caregivers regarding the notification unless specifically authorised to do so.

You are required to confer with the Principal before responding to a request by CS or any other officers to attend an interview with a child (victim). You cannot be compelled by CS to attend such an interview and the advantages and disadvantages of attendance need to be carefully assessed before a decision is made.

You may be required to report in a detailed manner on any matter regarding reportable conduct about which you have notified or been notified. The confidentiality of such a report will be maintained unless otherwise required by a Court Order. Information relating to any matter of reportable conduct will need to be recorded in a signed statement.

Definitions

Allegation

An allegation against an employee might involve behaviour that is reportable conduct or behaviour that is exempt from notification to the Ombudsman but is required to be investigated by the School

Behaviour that does not constitute reportable conduct

Allegations against employees, that are exempt from notification to the Ombudsman, are:

- a) 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; or
- b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under s. 25CA of the Ombudsman Act 1974. (There is a detailed process to observe to determine if alleged behaviour falls within this exemption and further information can be obtained from the Principal).

Examples of conduct that would not constitute "reportable conduct" include:

- touching a child in order to attract a child's attention to guide a child or to comfort a distressed child
- a teacher raising his or her voice in order to attract attention or to restore order in the classroom
- conduct that is established to be accidental
- providing appropriate medical care to a child who is hurt
- not providing supervision where this was for good reason, and for a short period of time and where the risk of harm was reasonably perceived at the time to be low
- actions found to have been appropriate physical contact in classes such as sport, drama, dance etc.

Child

Under the Child Protection (Offenders Registration) Act 2000, the Ombudsman Act 1974, the Child Protection (Working with Children) Act 2012 all children and young people up to the age of 18 years are defined as children. The Children and Young Persons (Care and Protection) Act 1998 includes children up to the age of 16 years.

Conviction of reportable conduct

This means any conviction of a person, in NSW or elsewhere, of an offence involving reportable conduct, and includes a finding by a court that a charge for such an offence is proven even though the court does not proceed to a conviction.

Disqualified Person

The Children's Guardian must not grant a working with children check clearance to the following persons ("**disqualified persons**"):

- a) a person convicted before, on or after the commencement of relevant legislation of an offence specified in Schedule 2, if the offence was committed as an adult,
- b) a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence.

See CHILD PROTECTION (WORKING WITH CHILDREN) ACT 2012 - SCHEDULE 2 for a list of offences that disqualify a person from receiving a clearance

Employee

An employee is any person who is employed by the School, whether or not they are employed to work directly with children, as well as anyone from outside the School who is engaged to provide services to children such as contractors, volunteers, students on placement, instructors of religion, sports coaches, visiting musicians, voluntary non-student members of theatrical production (Section 25A Part 3A of the Ombudsman Act 1974).

Head of Agency

The Head of Agency is the Principal or in his absence the Acting Principal.

Internal investigation of an allegation

This involves a process where the School:

- gathers all relevant facts
- makes a decision as to whether an allegation is sustained or not
- provides information to assist any relevant employment proceedings.

When undertaking an investigation, the School will be mindful of “The Association of Independent Schools NSW and The NSW/ACT Independent Education Union – Recommended Protocols for Internal Investigation and Disciplinary Proceedings”

Mandatory reporting of a child or young person at risk of significant harm

Section 27 of the Children and Young Persons (Care and Protection) Act 1998 provides for mandatory reporting as follows: -

- (1) This section applies to:
 - (a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children, and
 - (b) a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children.
- (2) If:
 - (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and
 - (b) those grounds arise during the course of or from the person’s work, it is the duty of the person to report, as soon as practicable, to the Director-General the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

(“Department” means Community Services “Director-General” means the person for the time being holding office or acting as the Director-General of the Department (Helpline 133627).)

Neglect

Neglect occurs when a child is harmed by the failure of a person whose job includes care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of such a person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child in that person’s care.

Office of Children’s Guardian (OCG)

The OCG is responsible for providing or declining working with children clearances to applicants. The new checking system came into place on 15 June 2013 and all new employees are subject to the clearance process and existing employees will be phased in to undertake the clearance over the coming years.

Physical assault

Using common law principles, physical assault must include all three of the following elements:

- it is an act committed on or towards a child and
- it involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them and
- it is either hostile or reckless (a reckless act is one where the person foresees the likelihood of inflicting injury or fear, and ignores the risk).

Actual physical harm does not have to occur in order for an assault to have taken place, i.e. the child does not have to be injured.

Physical contact which is an inevitable part of everyday life does not amount to an assault.

Reportable allegation

An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct and must include:

- identification of a person who is a current employee of the School
- an alleged offence or description of offending behaviour that meets the definition of reportable conduct
- a person who was a child at the time of the alleged offence or behaviour described.

All allegations (including anonymous allegations) of reportable conduct must be reported to the Ombudsman.

Complaints that form the basis of less serious allegations i.e. non reportable conduct, will be dealt with in accordance with the relevant School Policy and the School's other legal obligations.

Reportable conduct

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), 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.

Risk Assessment

It is the analysis of the facts and circumstances known to the Principal when he is made aware of allegations of reportable conduct to determine whether any measures need to be taken for the safety and welfare of all concerned.

In the context of the "Working with Children Clearances" the process of analysing information gathered through background checking to decide whether the Office of Children's Guardian provides a Clearance to a volunteer or worker.

Risk of Significant Harm

Under Section 23 of the Children and Young Persons (Care and Protection) Act 1998 a child or young person is "at risk of significant harm" if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of any one or more of the following circumstances:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
- in the case of a child or young person who is required to attend school in accordance with the [Education Act 1990](#) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
- the child or young person has been, or is at risk of being, physically or sexually abused
- or ill-treated,
- the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
- the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note: Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

Sexual Offence

The term ‘sexual offence’ encompasses all criminal offences involving a sexual element that are ‘committed against, with or in the presence of a child’.

These offences include (but are not limited to) the following:

- indecent assault
 - sexual assault
 - aggravated sexual assault
 - sexual intercourse and attempted sexual intercourse
 - possession/ dissemination/ production of child pornography or child abuse material
 - using children to produce pornography
 - grooming or procuring children under the age of 16 years for unlawful sexual activity
 - deemed non-consensual sexual activity on the basis of special care relationships.
- All cases involving a sexual offence would also involve sexual misconduct.

Sexual Misconduct

The term ‘sexual misconduct’ includes conduct that does not necessarily equate to a criminal offence. For sexual misconduct to constitute reportable conduct, the alleged conduct must have been committed against, with or in the presence of a child.

There are two categories of sexual misconduct in addition to sexual offences:

- crossing professional boundaries
- sexually explicit comments and other overtly sexual behaviour.

Crossing professional boundaries

Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate:

- relationship with;
- conduct towards; or
- focus on;

a child or young person, or a group of children or young persons.

In the area of ‘crossing professional boundaries’, particular care should be exercised before making a finding of sexual misconduct. For example, an employee who, on an isolated occasion, ‘crosses professional boundaries’ in a manner that involves little more than poor judgement could not be said to have engaged in sexual misconduct. Also, in cases where an employee has ‘crossed boundaries’ in terms of their relationship with a child, if there is evidence which clearly shows that the employee did not seek to establish an improper relationship with the involved child, then this does not constitute sexual misconduct.

However, persistent less serious breaches of professional conduct in this area, or a single serious ‘crossing of the boundaries’ by an employee, may constitute sexual misconduct, particularly if the employee either knew, or ought to have known, that their behaviour was unacceptable.

The School’s Code of Conduct outlines the nature of the professional boundaries which should exist between employees and children/young people. For employees who either intentionally breach that code or have demonstrated an inability to apply it appropriately, it may be necessary for the staff member’s Senior Manager to provide more detailed written advice about what constitutes appropriate behaviour.

Sexually explicit comments and other overtly sexual behaviour

Sexual misconduct includes a broad range of sexualized behaviour with or towards children. While it is not possible to provide a complete and definitive list of unacceptable sexual conduct involving children, the following types of behaviour give strong guidance:

- sexualized behaviour with or towards a child (including sexual exhibitionism)
- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching involving a child
- personal correspondence and communications (including emails, social media and web forums) with a child or young person in relation to the adult’s romantic, intimate or sexual feelings for a child or young person
- exposure of children and young people to sexual behaviour of others including display of pornography
- watching children undress in circumstances where supervision is not required and it is clearly inappropriate.

Reference should also be made to the NSW Ombudsman website for further information on the above definitions.

Special care relationships

Teachers along with certain other staff are included in the definition of special care relationships in Section 73 of the Crimes Act 1900 (see section headed “Staff Member above”).

Spent conviction

Those offences included on a person’s criminal record which, because of the passage of time and legislative preconditions have been met, are no longer to be considered in any administrative decision making.

Sexual offences can never be “spent” for the purposes of an application for child-related employment in NSW (Criminal Records Act 1991, Section 15 (1A)).

Vexatious

Where enquiries into the matter find that the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made.

Working with Children Clearance

Staff are required to obtain a Working with Children Check Clearance to do their job at the

School because of their direct responsibility for children or: -

- (a) the requirement or ability of all School staff to have face to face contact with children in the School's care; or
- (b) the nature of their role may enable them to have access to a child's personal information; or

An application needs to be commenced on the website of the OCG and once the Clearance letter has been received it should be sent to the Principal along with the staff member's date of birth.

Legislative Requirements

As mentioned above for the purposes of this Policy and the various legislative requirements the Principal or Acting Principal is the School's Head of Agency. A summary of the various pieces of legislation involved with child protection follows: -

- **Ombudsman Act 1974** requires the Principal as Head of a non-government school to respond to allegations against employees and to notify the Ombudsman of reportable allegations or convictions.
- **Child Protection (Working with Children) Act 2012** requires the School to use the Working with Children Check administered by the OCG to screen people who apply to work in child-related positions in the School. The Principal is also required to notify the OCG of certain sustained findings of reportable allegations
- **Children and Young Persons (Care and Protection) Act 1998** mandated employees are required to report to the 'Helpline' (133 627) of CS any children and young people whom they suspect to be at 'risk of significant harm'.

NB It should be noted that in October 2005 the Association of Independent Schools entered a **Memorandum of Understanding** (MOU) with the Department of Family and Community Services concerning centralized reporting to CS.

In the event that a mandatory reporter complies with the procedures for centralized reporting of his or her employer (which procedures are pursuant to this MoU) and has no knowledge of any failure to relay the risk of significant harm report to CS, then CS will accept that the mandatory reporter has reported to CS in accordance with section 27, *Children and Young Persons (Care and Protection) Act 1998* and CS will not initiate any relevant prosecution for breach of that section.

The Principal is accountable to relay a report of risk of significant harm to CS when staff employed within the School report risk of significant harm to the Principal. Should the Principal fail to relay the risk of significant harm report, then CS may take action against the Principal in accordance with Section 27, *Children and Young Persons (Care and Protection) Act 1998*.

Prevention

This School clearly opposes any practice that involves conduct of a reportable nature and will be constantly looking to implement measures and strategies that are aimed at preventing reportable conduct and other harm coming to children in its care. These measures and strategies will include: -

- developing and reviewing strategies to minimise reportable conduct occurring;
- requiring employees to sign off their acknowledgment and understanding of this Policy to protect children;
- ensuring this Policy is dated and contains a date when it will be reviewed;
- adopting the “*Code of Conduct*” (that assists staff in understanding appropriate and inappropriate behaviours);
- over a period of time clearly defining each person’s current role within the organisation;
- identifying people who are not suitable to work with children through implementing thorough employment procedures including reference checking, pre-employment screening and detailed questioning at interviews;
- providing information to families and the community on the child protection strategies that have been adopted by the School;
- training for employees to promote best practices and to ensure a safe environment for children and employees, and
- raising awareness in the School community about child protection by displaying where appropriate brochures, posters or other means of communication;
- encouraging members of the School Community to make constructive contributions as to how this Policy and the foregoing measures and strategies can be improved.

Response to Allegations

When responding to allegations, the Principal will be mindful of the “The Association of Independent Schools NSW and The NSW/ACT Independent Education Union – Recommended Protocols for Internal Investigation and Disciplinary Proceedings” (Appendix A) as amended to reflect the changes made by the Child Protection Amendment Act 2003.

Any allegation of reportable conduct to be made against the Principal needs to be made to the Chairman of the School Council and his contact details can be obtained from the Principal.

Risk Assessment

With the abovementioned process in mind the Principal or his nominee will:-

- conduct an initial and subsequent risk assessment, including an assessment of the safety of the child(ren) concerned;
- decide what action, if any, e.g. suspension, is to be taken regarding the employee who has had an allegation made against them, and
- assess and monitor the risk of continued access of the employee (who has had an allegation made or conviction recorded against them), to children attending the School.

Documentation and Record Keeping

All documents held by the School and relating to an allegation or conviction of reportable conduct or details of behaviour that does not constitute reportable conduct will be kept on a strictly confidential basis

Should the Ombudsman be notified in accordance with the School's obligations, the related documents will be kept indefinitely and stored in a secure location separate to the employee's file.

The Principal will be responsible for keeping and storing all records relating to all matters addressed by this Policy and only those persons whom the School is obliged to advise of this information or need to be aware of the contents of such documents will have access to them.

Support Available for All Parties

Attached are "*Guidelines to Assist a Child or Young Person who has Disclosed Reportable Allegations*" (Appendix B) that seeks to assist staff in understanding the approach that should be taken when a child or young person reveals abuse to you.

Review Date

The School will review this Policy and associated documents within twelve months and reissue a further version if necessary. Any suggested improvements should be forwarded to the Principal. Whilst the School will strive to ensure it has a robust and effective "Policy to Protect Children in Its Care" it is also recognised that this Policy and the School are unable to exceed any statutory obligation upon the School.

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Appendix A

The Association of Independent Schools N.S.W. and The NSW/ACT Independent Education Union Recommended Protocols for Internal Investigative and Disciplinary Proceedings - 2001

Introduction

It is acknowledged that each case of alleged reportable conduct which requires internal investigation and possible disciplinary action will be quite different. These protocols have been compiled to advise how investigations and disciplinary proceedings may be conducted. They are guidelines only and in applying them one should always bear in mind the primary objectives of the relevant legislation. If adopted by a school this document should be provided to staff who are the subject of an internal investigation into reportable conduct.

Outline of Obligations under the Legislation

Upon receipt of an allegation of reportable conduct against an employee, the head of agency should determine whether or not it is an allegation about reportable conduct that may involve misconduct.

All allegations against employees that involve reportable conduct must be reported within 30 days of receipt of the allegation to the Ombudsman. The allegations should also be reported to the Community Services (CS) if there is a current concern for the safety, welfare and well being of the child. The head of agency will need to:

- conduct or cause to be conducted, an investigation of the allegation;
- decide as to whether on the balance of probabilities the allegation has been sustained or not
- sustained;
- decide on the disciplinary action, if any, to be taken against the employee.

At the conclusion of the investigation and the decision regarding disciplinary action, a complete report including the findings, disciplinary action decided upon and any other recommendations must be forwarded to the Ombudsman together with any information which the accused person requires to be included.

Completed relevant disciplinary proceedings should be reported to the Commission for Children and Young People unless the allegation was found to be false, vexatious or misconceived.

Risk Assessment

Upon the receipt of an allegation of reportable conduct against an employee, the head of agency is responsible for carrying out an initial risk assessment prior to the investigation of the allegation. The purpose of the risk assessment is to identify and minimise the risk:

- to a child or children who are alleged to have been victims of the reportable conduct;

- to the employee against whom the allegation has been made;
- to other children with whom the employee may have contact;
- to the proper investigation of the allegation.

This may result, for example, in the employee being temporarily relieved of some duties, being required to avoid certain pupils or, in some special cases, being suspended from duty. Any decision to take action as a result of a risk assessment is in no way an indication of the guilt of the employee concerned.

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

- the nature of the allegation;
- vulnerability of children;
- nature of the position occupied by the employee;
- the level of supervision of the employee;
- disciplinary history of the employee;
- safety of the employee;
- any comments made by the employee.

Risk should be continually monitored throughout the investigation.

The Investigation

In conducting an investigation into allegations of reportable conduct, the head of agency should be guided by the following principles.

1. Conflict of Interest and Appointment of Investigator

All investigations must be conducted in an impartial, independent and objective manner and be open and transparent. The investigator must not show bias or favour to the alleged victim(s), the person the subject of the allegation, nor in outcomes which might affect the reputations of the particular agency.

In some instances the head of agency may call on an external expert to undertake the investigation. This may be the case where the agency determines that it does not have the expertise to satisfactorily conduct the investigation or in cases where a conflict of interest or bias may arise.

The mere perception of a conflict of interest by an accused person is not sufficient in itself to require the appointment of an external investigator. However, if there is a clear history of conflict between the proposed investigator and the employee it would be advisable for another investigator to be appointed.

2. Confidentiality

Heads of agency and persons conducting investigations should maintain a high level of confidentiality throughout the investigation phase. Action for defamation could result in situations in which agencies have published allegations of reportable conduct against an employee.

The person making the allegation also has a right to protection, and if appropriate, confidentiality. In a limited number of circumstances, it may be inappropriate to advise the accused person of the identity of the person making the allegation. The employee should not discuss the allegations with students (including the alleged victim) nor with parents without the approval of the school.

Steps in the Investigative Process

A proper investigation usually requires that an employee against whom an allegation has been made, be told promptly the substance of the allegation and be given the right to reply to the allegation.

If CS or police are investigating the allegation, advice should be received from them about when to inform the employee about details of the allegation. Otherwise, the decision of when to inform the employee will depend on the protection of notifiers and witnesses, the quality of evidence to be obtained and the possibility of prejudicing the conduct of the investigation.

Where possible employees should be given advance notice of an interview with the head of agency or an appointed investigator, details of the allegation (sufficient to allow the employee to respond) and be advised that they may have a witness at the interview.

While it is desirable for an employee to be given reasonable notice before being required to respond to an allegation, what constitutes reasonable notice will depend on the circumstances of the situation.

Employees may wish to have someone support them during the interview process. The support person may be a friend on staff or the chapter representative. However, 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 in the proceedings.

A record should be kept of the meeting, this could be made by a tape recording, a full written record or short minutes. The form of record may be dependent on the seriousness of the allegation.

Listed below are fundamental steps in the investigative process. These may need to be varied on occasions to meet particular circumstances. The employer should normally:

- a) clarify the allegation and determine that it is an allegation of reportable conduct;
- b) make appropriate notifications to CS, police, Ombudsman;
- c) carry out a risk assessment;
- d) collect all available relevant information (ensure full documentation);
- e) interview all relevant witnesses (ensure all interviews are adequately recorded);
- f) make the employee fully aware of the allegations;
- g) possibly give the employee access to relevant documents on which the employer is relying, unless such documentation needs to be kept confidential;
- h) interview the person the subject of the allegations (ensure procedural fairness);
- i) consider all the evidence and make a preliminary finding as to whether the allegation is sustained or not sustained.

Findings

At the conclusion of the investigation, the investigator will make a preliminary finding on the balance of probabilities that:

1. the allegation was false; or
2. the allegation was vexatious, that is, was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made; or
3. the allegation was misconceived, that is, whilst the allegation was made in good faith it was either without substance or a misunderstanding on behalf of the person making the allegation occurred or the incident would not reasonably be considered as reportable conduct (irrespective of the definition), sexual misconduct or an act of violence; or
4. the allegation was not sustained; or
5. the allegation was not one of reportable conduct, but might constitute a breach of professional behaviour or judgment which requires further professional disciplinary action; or
6. the allegation was sustained and the matter required disciplinary action.

A finding of 'not sustained' means that the investigator considers that there is insufficient evidence to determine that the alleged event occurred, on the balance of probabilities.

The employee should be told of the preliminary finding and given an opportunity to respond including, if they wish, in writing.

Disciplinary Proceedings

For the purpose of this recommended protocol disciplinary proceedings are defined as the action taken as a consequence of the findings arising out of the investigation. When conducting disciplinary proceedings, the employer should have regard to procedural fairness. This will usually involve:

- giving the employee details of the final finding;
- informing the employee of the possible action the employer may take; and
- giving the employee a right to respond including, if they wish, in writing.

When the investigation has been completed:

- the employee is entitled to ask the Ombudsman to review the investigation and findings if the employee believes the investigation was unfair, biased, incomplete or suffered some other deficiency giving rise to an incorrect finding.
- the employee must be advised if the employer has notified completed disciplinary proceedings to the Commission for Children and Young People.
- if the completed disciplinary proceedings are notified to the Commission for Children and Young People, the employee is entitled to inspect the employer file in accordance with Freedom of Information Principles, subject to any exemptions which may apply under that Act.

Notification to the Commission for Children and Young People (CCYP)

The Commission for Children and Young People Act requires all completed investigations into allegations of reportable conduct to be reported to it. It is an offence under the Act to fail to report unless the allegation is found to be either:

- false (the alleged conduct did not occur);
- vexatious (without substance, malicious intent);
- misconceived (not reasonably be considered to be reportable conduct).
- In the findings listed above only findings 4 and 6 need be reported to the CCYP.
(NB
- The School will be mindful of this Protocol whenever it is necessary to undertake an investigation into relevant allegations.
- The suitability of this Protocol to the School's needs and its legislative obligations will be reviewed on a regular basis and generally at the same time as the School's "Policy to Protect Children In Its Care".
- Since the publication of this Protocol it should be noted that wherever reference is made to the Commission for Children and Young People this should be replaced with the Office of Children's Guardian. It should also be noted that only sustained findings of serious physical assault or sexual misconduct need be reported by the School to the Office of Children's Guardian.

Appendix B

Guidelines for Staff Assisting a Child or Young Person who has Disclosed Abuse

When a student discloses abuse, staff need to be well prepared so that they can be supportive of the student and at the same time be very clear about their responsibility which in the first instance is to report to the Principal and not investigate. However, when in a one-to-one situation, children generally disclose with great hesitation and often with a mix of intense emotions, including fear, embarrassment and guilt. Sometimes they may only hint at or tell a small part of their experience to see how the staff member reacts before fully disclosing. It is essential that the staff member remains calm and supportive of the student.

The staff member should:

- actively listen to the student and never probe for details or ask leading questions: e.g. "Did s/he touch your vagina/penis?";
- refrain from questioning excessively through fear of making a mistake in deciding to notify;
- talk gently and reassuringly, in private, pointing out that you are there to help;
- only ask questions that are open-ended and designed to provide sufficient information to decide whether the suspicion of abuse is sufficiently strong to warrant a report being made e.g. what happened then?

Members of staff will help a student making a disclosure by:

- a) listening in a calm way
- b) reassuring the student that you believe him
- c) saying that you are pleased that the student has told you as it was the right thing to do
- d) avoiding any reaction that could make the student regret having talked about the experience
- e) emphasising that what has happened is definitely not the student's fault
- f) acknowledging that it is very hard to talk about such things
- g) telling the student that the best way to stop the abuse happening is to report it to the people who have the responsibility for the care and protection of children.

When a student discloses:

- a) do not make promises that you will not tell anyone; in fact, you must tell the child that you have a responsibility to tell the Principal
- b) never assure the child that the abuse will stop, as that cannot be guaranteed.

Interagency guidelines emphasise the importance of “being honest with the child about your responsibility for taking action to protect them and what is likely to happen. However, it is important not to do anything that may make the situation worse and cause further harm to the child by asking probing questions, accusing parents or discussing the circumstances of the notification with potential witnesses or colleagues” (Inter-agency Guidelines for Child Protection Intervention).

Responding to a disclosure made in a group or classroom

If a student begins to make a disclosure in a group situation use the strategy of ‘protective interruption’ by:

- a) acknowledging that you have heard the child
- b) indicating your support by explaining that what you think they are saying sounds important and that it would be better to talk about it later.