

# 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.

The John Berne 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 John Berne School has a legal obligation to investigate and report to the NSW Ombudsman all allegations of reportable conduct made against staff at the school as defined by the Ombudsman Act 1974 (NSW) (Ombudsman Act).

For the purposes of this policy, “staff” and “staff member” is defined to include teaching and non-teaching staff, 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 25A of the Ombudsman Act defines reportable conduct as including:

- any sexual offence or sexual misconduct, committed against, with or in the presence of a child (including child pornography offences, sexual touching or an offence involving child abuse material) including grooming behaviours
- any assault, ill-treatment or neglect of a child
- any behaviour that causes psychological harm to a child (whether or not, in any case, with the consent of the 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.

## 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 [complaints@johnberneschool.org](mailto:complaints@johnberneschool.org)
2. Writing a letter to the school addressed to the Complaints Manager.
3. Telephoning the school and asking to speak to the Complaints Manager.

If the Complaints Manager is the subject of your complaint or allegation of misconduct or reportable conduct, please contact the Stage Coordinator [nicole.arathoon@johnberneschool.org](mailto:nicole.arathoon@johnberneschool.org).

## [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 Ombudsman. All investigations uphold the principles of procedural fairness 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**

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 NSW Ombudsman as soon as practicable.

We also conduct a risk assessment following any allegation that includes conduct defined as reportable conduct to identify and mitigate any ongoing risks to student safety and wellbeing.

The school must conduct an internal investigation, led by the Principal or an accredited investigator.

When conducting an internal investigation, the school follows the NSW Ombudsman's [Practice Guide: Planning and Conducting an Investigation](#).

A further risk assessment is conducted during the internal investigation and at the end of that investigation.

There are five potential findings that the school can make following the internal investigation:

- Sustained: finding that the alleged conduct did occur
- Not Sustained - Insufficient Evidence: finding that there is some, but insufficient, evidence available to reasonably establish that the alleged conduct did occur
- Not Sustained - Lack of Evidence of Weight: finding that the evidence available is of such poor probative value, or lacking weight, that on the balance of probabilities the conduct did not occur
- False: finding that the alleged conduct did not occur
- Not Reportable Conduct: finding that the alleged conduct was not reportable - for example, conduct that was reasonable in the circumstances or accidental. This may also include 'misconceived' matters where allegations were made in good faith, however it was based on a misunderstanding of what occurred, and therefore the conduct is not reportable.

The school is required to notify the NSW Ombudsman of the findings of the internal investigation as soon as possible once the internal investigation has been finalised.

### [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 Ombudsman, we will conduct a final risk assessment of the conduct, the staff member and the circumstances, and take action to mitigate ongoing risks, including reporting findings of workplace misconduct to the Office of the Children's Guardian who is responsible for administering Working with Children Checks.

## [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 NSW Ombudsman's guidance on this issue provided in the [Providing advice about reportable conduct investigations to children, parents and carers fact sheet](#).

The school is permitted to disclose information to:

- the child who was allegedly the subject of the reportable conduct that forms the basis of the reportable allegation
- 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 NSW Ombudsman 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 Complaints Manager.