

## Procedures for Handling Allegations of Staff Misconduct, Including Reportable Conduct

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| <b>Scheduled Review Date:</b> | 8/12/2028  |
| <b>Policy Owner:</b>          | Principal  |

### Introduction & Purpose

ICS requires all staff to comply with its codes of conduct, directions, policies, procedures and standards of conduct and performance (collectively, standards). Staff are also required to uphold our values.

These standards and values provide guidance to staff to clarify what constitutes acceptable and unacceptable conduct and performance at ICS, particularly when interacting with students. These standards and values also act as a tool to prevent staff misconduct (which may detrimentally affect a student’s education, safety and wellbeing; staff relationships and safety; or the operation and reputation of ICS).

Complaints and concerns regarding allegations of staff misconduct (including reportable conduct), are managed in a different manner to other concerns and complaints received by the School. This is because often these concerns and complaints raise potential privacy and confidentiality issues, and require ICS to follow certain procedures (for example, to ensure procedural fairness is afforded to the staff member alleged to have engaged in misconduct).

Some complaints and concerns trigger legislative obligations. For example, ICS has a legal obligation to investigate and report to the Office of the Children’s Guardian all allegations of reportable conduct made against staff at the School as defined by the Children’s Guardian Act.

This document sets out the process and procedures by which members of the School community (including staff, students and parents) can raise a concern or make a complaint about alleged staff misconduct. It also sets out the process that the School will follow when dealing with reports about alleged staff misconduct.

### DEFINITIONS

“**Care and Protection Act**” means the *Children and Young Persons (Care and Protection Act) 1998* (NSW).

“**Children’s Guardian Act**” means the *Children’s Guardian Act 2019* (NSW).

“**DCJ**” means Department of Communities and Justice.

“**Disclosable conduct**” means misconduct, or an improper state of affairs or circumstances, relating to the School or any related body corporate. Complaints alleging disclosable conduct may be protected under Whistle-blower Laws and additional legal requirements may apply to the School’s handling of such complaints.

“**OCG**” means the Office of the Children’s Guardian.

“**Reportable conduct**” is defined in section 20 of the Children’s Guardian Act to mean:

- a sexual offence committed against, with or in the presence of a child;
- sexual misconduct (including grooming behaviours) with, towards or in the presence of a child;
- ill-treatment of a child;
- neglect of a child;
- an assault against a child;
- an offence under sections 43B or 316A of the *Crimes Act 1900* (NSW), (relating to failure to protect a child from child abuse, or a failure to report child abuse); and
- behaviour that causes significant emotional or psychological harm to a child.

Examples of indicators of significant emotional or psychological harm include:

- displaying behaviour patterns that are out of character;
- regressive behaviour; or
- anxiety or self-harm.

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. Please refer to our *Child Protection Policy* for more information.

“**Staff**” in this document means all School Council (Board) members, employees, volunteers, and contractors (including external providers).

“**Staff misconduct**” in relation to a staff member other than a contractor, means conduct that falls short of the School’s standards or values, and includes conduct that:

- is a criminal offence.
- is reportable conduct.
- is disclosable conduct.
- endangers the safety and wellbeing of students or others at the School.
- breaches professional or occupational standards.

- crosses professional boundaries with a student;
- displays neglect of duties/responsibilities;
- involves alcohol and/or other substance abuse;
- is physically, verbally or emotionally abusive; or
- is otherwise unlawful.

In relation to contractors (including external providers), it includes conduct that:

- is a criminal offence;
- is reportable conduct;
- is disclosable conduct;
- endangers the safety and wellbeing of students or others at the School;
- breaches professional or occupational standards;
- falls short of the School's standards or values which apply to the contractor;
- crosses professional boundaries with a student;
- otherwise breaches the contractor's commitments or obligations to the School; or
- is otherwise unlawful.

**"Whistleblower Laws"** means Part 9.4AAA of the *Corporations Act 2001* (Cth).

### **Raising a Concern or making a Complaint**

**If there is a concern that a student is in immediate danger, call the police/ambulance on 000.**

Concerns or complaints about alleged staff misconduct should be promptly raised with the Principal by one of the following methods:

1. Email: (TBC)
2. Telephone: (TBC)
3. Arranging an in-person or online meeting, which can be organised by telephoning the School.
4. Writing a letter to the School addressed to the Principal



If the Principal is the subject of the concern or complaint, or if they **both** may have a conflict of interest in dealing with the matter, the concern or complaint should be raised with the Chairperson of ICS.

The Principal or Chairperson, as the case may be, will provide impartial information about the process that ICS will follow to deal with a concern or complaint about alleged staff misconduct to:

- the person raising the concern or complaint about alleged staff misconduct, and
- when appropriate, any person against whom there is an allegation of staff misconduct.

If other staff receive a concern or complaint about alleged staff misconduct, they should immediately share it with the Principal or Chairperson, as the case may be.

### Responding to Staff Misconduct Allegations

Our response to alleged staff misconduct will generally feature the following steps:

1. Treating the allegation(s) seriously.
2. Classifying the type of staff misconduct which is being alleged (see below), and complying with any mandatory reporting obligations.
3. Carrying out a risk assessment.
4. Providing guidance, to those with a need to know, about the process which the School is following to deal with the alleged staff misconduct.
5. Providing appropriate support to any staff and students affected by the substance of the allegations.
6. When allowed to do so, investigating the alleged staff misconduct.
7. Determining appropriate outcomes.

However, the School will occasionally need to vary these steps (and the order) depending upon the nature of the staff misconduct being alleged, and any associated risk to the education, safety and wellbeing of the School's students, or the safety and wellbeing of other persons.

### Classification of Alleged Staff Misconduct

The School initially considers all concerns and complaints regarding alleged staff misconduct to determine whether the alleged conduct would be:

1. If substantiated, a criminal offence.

If the concern or complaint involves an alleged criminal offence, the School will notify the police as soon as possible.

2. Grounds for making a mandatory report to the DCJ, or a non-mandatory report to the DCJ under the School's *Child Protection Policy*.

If the concern or complaint provides reasonable grounds to suspect that a child under 16 is at risk of significant harm, the School is required under the Care and Protection Act to notify the DCJ.

If the complaint provides reasonable grounds to suspect that a young person aged 16 or 17 is at risk of significant harm,



and there are current concerns about the safety and wellbeing of that person, the School will also notify the DCJ.

Reports may be made via the Child Protection Hotline on 132 111.

3. If substantiated, reportable conduct.

If the concern or complaint involves alleged reportable conduct, the School is required by law to report the allegation to the OCG as soon as practicable.

Following any allegation that includes conduct defined as reportable conduct, a risk assessment will be conducted to identify and mitigate any ongoing risks to student safety and wellbeing.

4. If substantiated, disclosable conduct, *and* whether the relevant concern or complaint has been reported in accordance with our Whistleblower Policy.

If the concern or complaint involves alleged disclosable conduct and was reported in accordance with our Whistleblower Policy, the School will manage the concern or complaint in accordance with that policy.

**Note:** if the alleged disclosable conduct is also reportable conduct, the process under our Whistleblower Policy may be altered to meet the Children's Guardian Act requirements for investigations.

5. If substantiated, staff misconduct does not fall into any of the above categories.

If the concern or complaint involves some other type of staff misconduct, the alleged misconduct will be investigated and determined through the School's standard staff procedures or, in the case of contractors (including external providers), the terms of the contractor's contract for services.

Sometimes the alleged staff misconduct may fall into more than one category. For example, a person may have reasonable grounds for suspicion that a child is at risk of significant harm, as well as a complaint about staff misconduct. In such cases, the School will deal with the relevant concern or complaint in a way which best aligns with its commitments and responsibilities. This may involve reports to multiple authorities.

If the School notifies a concern or complaint to the police or DCJ, the School may be required to wait for the relevant authority to conclude its own investigations before investigating the matter itself.

## Investigations

The School's investigations uphold the principles of procedural fairness and confidentiality. This typically means that:

- Investigations are conducted by, and decisions made by, unbiased decision-makers.
- The person accused of alleged staff misconduct is given a reasonable opportunity to respond to the allegations.
- The standard of proof for findings is the 'balance of probabilities'.
- While the investigation is ongoing, information is only to be shared with those who need to know.

## Finding Regarding Alleged Reportable Conduct

Information published by the OCG describes adverse and non-adverse findings.

**Adverse findings** are findings of reportable conduct. These might be expressed as a finding that the alleged conduct did occur or that one or more allegations are sustained or substantiated.

**Non-adverse findings** are findings other than a finding of reportable conduct. These might be expressed as a finding that an allegation is:

- Not Sustained – Insufficient Evidence: a 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: a 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: a finding that the alleged conduct did not occur.
- Not Reportable Conduct: a 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, this was based on a misunderstanding of what occurred, and therefore the conduct is not reportable and also a finding of misconduct or inappropriate professional conduct that may breach standards, but is not reportable under the reportable conduct scheme. If a misconduct finding is made the School will consider any further steps it should take (see further below).

If the investigation results in a finding of reportable conduct, following the School’s notification to the OCG, a final risk assessment may be conducted of the conduct, the staff member and the circumstances, and further action taken to mitigate ongoing risks.

Findings of reportable conduct in relation to sexual misconduct, a sexual offence or a serious physical assault, are referred to the OCG’s Working with Children Check Directorate, which is responsible for administering Working with Children Checks and issuing Clearances.

## Risk Assessment

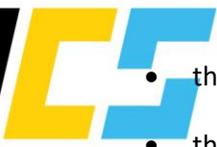
Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.

The Principal is responsible for risk management in response to alleged staff misconduct, and will assess risk upon becoming aware of alleged staff misconduct, and during and at the end of any investigation. The Principal may involve other senior staff as appropriate in this process.

## Initial risk assessment

The purpose of this initial risk assessment is to identify and minimise the risks to:

- any students who are the subject of the allegation.
- any other students with whom the staff member may have contact.
- the staff member the subject of an allegation.



- the School; and
- the proper investigation of the allegation.

Islamic College of Sport NSW  
Australian College of Physical Education  
10 Parkview Drive, Sydney Olympic Park, NSW, 2127  
admin@icsnsw.com.au  
1300 427 843

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

- the nature and seriousness of the allegations.
- the vulnerability of the students, with whom the staff member has contact at work.
- the nature of the position occupied by the staff member, the subject of an allegation.
- the level of supervision of the staff member, the subject of an allegation.
- the disciplinary history or safety of the staff member, the subject of an allegation; and
- the measures which the School could impose to manage risk.

The Principal will take appropriate interim action to minimise risks pending the outcome of an investigation into allegations regarding staff misconduct. This may include the staff member the subject of an allegation being: temporarily relieved of some duties; required not to have contact with certain students; asked to work at a different location or perform different duties; asked to take leave; or suspended from duty.

**Note:** A decision to take interim 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 interim action, including a decision that employee be suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

### **Ongoing risk management**

The Principal will continually monitor risk during any investigation including in the light of any new relevant information that emerges. In some cases, this may mean new interim measures are introduced during an investigation.

### **Risk management at the conclusion of the investigation**

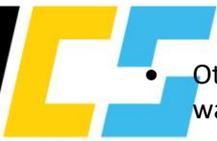
At the completion of an investigation regarding alleged staff misconduct, the Principal will again consider the risks when deciding the outcomes of the investigation.

### **Outcomes of Staff Misconduct**

ICS does not tolerate staff misconduct. Where the School determines that staff misconduct has occurred it will take appropriate action to demonstrate the importance of its standards and values, after having regard to all relevant circumstances.

Outcomes for staff misconduct may include:

- Employees: counselling, additional training, changed or alternate duties, increased supervision of work, a warning, or termination of employment.



- Other staff: Counselling, additional training, changed or alternate duties, increased supervision of work a warning, or termination of engagement.

When deciding outcomes, the safety and wellbeing of students will be our paramount consideration.

## Confidentiality

When allegations regarding staff misconduct (including reportable conduct) are raised, there will usually be confidentiality and privacy reasons, which limit the information the School, can share with the person who raises a concern or complaint, the person the subject of the concern or complaint and, where allegations concern a student, that student's parents.

Similarly, to ensure the integrity of the School's investigation processes those involved (including staff, students and parents) will be required to maintain appropriate confidentiality.

However, the School will provide appropriate communication with those who raise concerns or complaints, and with the parents of a student the subject of allegations, to clearly communicate:

- The action the School is taking to demonstrate that it treats the concern or complaint seriously.
- That the School:
  - is complying with its legislative obligations (if applicable).
  - treats the safety and wellbeing of students as its paramount consideration (if applicable).
  - upholds its standards and values.

No employee may comment to the media about alleged staff misconduct unless expressly authorised by the Principal to do so.

Any staff member who becomes aware of a breach of confidentiality in relation to alleged staff misconduct must advise the Principal as soon as they become aware of the breach.

## Where to Find More Information

### Reportable conduct

The OCG website has a section of its website dedicated to reportable conduct and child protection as well as several informative fact sheets on the topic of reportable conduct and the School's obligations to report.

### Other information

Further information about the School's policies and procedures relating to staff misconduct, reportable conduct or complaints handling generally, may be sought from the Principal.



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