



Education

Responding to Allegations Against Employees in the Area of Child Protection

Employee Performance and Conduct Directorate

November 2017

FOREWORD

We have a responsibility to ensure that students in our schools are safe. We share this responsibility with parents and the wider community.

Schools are generally very safe places for children. However, school leaders and staff must continue to review school practices to maintain schools as child safe environments. Students should be at the center of all decisions that impact on them in schools.

While every student has the right to feel safe and protected at school we have a particular responsibility to students with disability because of their vulnerability. We must actively respond and act upon child protection concerns raised by students with disability, their family or carers.

Staff must understand their responsibilities to respond to and report on risk of harm and significant harm to students and develop strategies to reduce risk. I encourage our staff to continue to focus on the wellbeing of students, to engage in child protection training and awareness measures, and to work closely with other agencies to support children and young people. Through the NSW information sharing provisions, we can continue to work productively to fulfil our obligations to protect children and young people. The department's obligation to respond to child protection allegations against employees is an important element of the NSW child protection system.

In circumstances where there are child protection allegations against departmental employees or those engaged to work in schools, employees are required to directly report the matter to the department's Employee Performance and Conduct Directorate or to ensure that a report is made. This document outlines the procedures for making such reports and the processes by which the department investigates allegations against employees.

This document gives information and advice to managers and staff and supports them to demonstrate leadership by providing an ethical and prompt response to allegations against employees and to develop strategies to keep children and young people safe.

The department will continue to support employees and to conduct investigations in a procedurally fair manner.

I encourage all staff and relevant stakeholders to read this document carefully.

Yours sincerely



Mark Scott AO
SECRETARY
DEPARTMENT OF EDUCATION

Contents

FOREWORD.....	1
1. Abstract.....	3
2. Applicability	3
3. Document history	3
4. Context.....	3
5. Policy statement.....	5
6. Definitions	6
7. Procedures for dealing with allegations.....	14
8. The disciplinary process.....	23
9. The Working with Children Check and the Office of the Children’s Guardian	24
10. Support.....	26
11. For further information	30
12. Appendices	31
12.1. Appendix 1 – Guide to notification information and process	31
12.2. Appendix 2 - A guide for teaching and protecting children and young people.....	33
12.3. Appendix 3 - Useful contact numbers	36

1. Abstract

This document sets out the procedures to be followed in response to allegations being made against employees of the Department of Education (the Department) in the area of child protection.

As an employer, the Department is governed by child protection and employment legislation (see Section 10.5 for a list of this legislation). These procedures reflect the Department's legislative responsibilities and demonstrate its commitment to protect the safety and wellbeing of students and to support the work of employees working with children and young people in an educational setting.

2. Applicability

These procedures apply to all employees including contractors, volunteer workers and student teachers on practicums.

3. Document history

This document *Responding to Allegations against Employees in the Area of Child Protection* was first published 23 April 2004. It was updated in 2010 and in 2017 to incorporate changes to other relevant legislation, policies and procedures.

4. Context

The paramount consideration when responding to allegations against employees in relation to child protection is the safety, welfare and wellbeing of children and young people. The *Teaching Service Act 1980* and the *Education (School Administrative and Support) Act 1987* state that the protection of children is to be the paramount consideration in taking action with respect to any officer or temporary employee and in dealing with any appeal against or determining any claim arising from or in relation to, that action.

When responding to allegations against employees, the Department also has a responsibility to ensure its employees are treated fairly and the rights of each individual are respected during an investigation and applicable disciplinary process.

These procedures:

- reflect the legislative requirements of the Department to report to Family and Community Services, the NSW Ombudsman, the Office of the Children's Guardian and the Independent Commission Against Corruption
- support the interagency work co-ordinated by Family and Community Services.

The roles of the other agencies are outlined below.

4.1. Family and Community Services (FACS)

FACS has a broad range of responsibilities in NSW. In relation to child protection, FACS receives, assesses and investigates reports where there is a risk of significant harm to children and young people and acts to maintain and monitor their safety.

FACS may also provide and arrange support for children, young people and their families.

The *Children and Young Persons (Care and Protection) Act 1998* requires teachers to make a report to FACS if they have concerns that a child or young person is at risk of significant harm.

The procedures for reporting to FACS as outlined in the document *Protecting and Supporting Children and Young People Policy 2010* are also to be followed in circumstances where concerns about risk of significant harm relate to the actions of an employee.

4.2. The NSW Ombudsman

The NSW Ombudsman has a range of functions in relation to child protection:

- oversees and monitors investigations of a child protection nature against employees of designated agencies, including the Department of Education
- ensures that designated agencies are responding appropriately to allegations against employees, and that the process is effective, accountable and fair
- keeps under scrutiny the systems that designated agencies have in place for handling and responding to allegations against employees concerning child protection.

Under the *Ombudsman Act 1974*, the Ombudsman must be notified of reportable allegations involving departmental employees, subsequent actions of the Department and the outcomes of these actions. The Employee Performance and Conduct Directorate (EPAC) of the Department will determine which allegations are reportable and will report to the Ombudsman as soon as practicable and, in any event, within 30 days (*reportable allegations* is defined in section 6.3).

Information about individual notifications made to the Ombudsman is not available to prospective employers or the general public.

4.3. The Office of the Children's Guardian (OCG)

The OCG was established in 1998 to promote the interests and rights of children living in out of home care. The *Child Protection (Working with Children) Act 2012* expanded the role of the OCG to include administration of a new Working with Children Check (WWCC) in NSW (see Section 9 of this document).

4.4. The Independent Commission Against Corruption (ICAC)

The principal functions of the ICAC are to investigate and expose corrupt conduct in the NSW public sector; to actively prevent corruption through advice and assistance, and to educate the NSW community and public sector about corruption and its effects.

The ICAC must be notified of any matter that may concern corrupt conduct in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.

5. Policy statement

As an employer, the Department has a responsibility to:

- ensure that all employees are aware of their obligations to report risk of significant harm to the [Child Protection Helpline](#) and of the procedure for doing so
- ensure that all employees are aware of the requirement to report all other concerns about the safety, welfare or wellbeing of students to the [Child Wellbeing Unit](#)
- ensure that all employees are aware of the indicators of child abuse and neglect of children and young people
- provide support for employees in maintaining professional standards related to relationships with students, recognising and reporting risk of significant harm
- investigate allegations of a child protection nature specifically related to the actions of an employee and ensure appropriate action is taken
- advise employees under investigation about support services that are available to them
- ensure that procedural fairness applies in situations where a decision is to be taken which may have a detrimental effect on the rights, interests or legitimate expectations of an individual
- assist employees in implementing relevant curriculum, student support strategies, departmental policy and procedures related to protecting children and young people from harm
- ensure that all employees in child related employment comply with the requirements to hold a current [Working with Children Check](#)
- conduct appropriate probity checking for new employees
- report to the Ombudsman certain convictions or allegations of a child protection nature made against an employee
- report to the OCG findings that an employee or volunteer in child related work has engaged in sexual misconduct towards, or seriously physically assaulted, a child.

The Department has produced several documents on child protection which, together provide a comprehensive policy framework addressing the responsibilities of employees. In particular, the [Protecting and Supporting Children and Young People Policy](#) is to be read in conjunction with this document.

All current child protection policies are available at the Department internet site at *Policies and Procedures*.

All workplace managers must ensure these procedures are readily accessible to all employees and are incorporated into child protection training at induction and at annual child protection updates for all employees.

6. Definitions

6.1. Commonly used terms used in this document

Child For the purpose of these procedures, a child is a person under the age of 18 years. However, with respect to mandatory reporting to the Child Protection Helpline, a child is defined as a person under the age of 16 years.

Young person A child aged 16 or 17 years.

Children and young people include:

- children and young people enrolled in NSW government schools and pre- schools
- children and young people accessing Assisted School Travel services
- children and young people supervised by Departmental employees
- any other child or young person allegedly maltreated by a Departmental employee.

Child related work Under the *Child Protection (Working with Children) Act 2012*, all departmental employees, contractors and volunteers in child related work require a Working with Children Check clearance (WWCC), subject to the phase in schedule.

A person is in child related work if they engage in paid or unpaid work for the Department which involves face-to-face unsupervised contact with children.

While they may not provide direct services to children, certain contractors, including school cleaners are in child related work. Paid employees of the Department who have access to confidential records or information regarding children are also in child related work.

Employees are not required to have a WWCC clearance if they are engaged in activities that do not ordinarily involve contact with children for extended periods.

The majority of parents and close relatives who volunteer with their child's or children's school are exempt from obtaining a WWCC clearance.

Any adult volunteer (including parent volunteers) who:

- will work as a part of a formal mentoring program or
- will provide intimate, personal care to children with a disability or
- is not a parent or close relative of a student of the school where the volunteer will be working but will have direct contact with children

is required to obtain a WWCC.

<i>The Employee Performance and Conduct Directorate (EPAC)</i>	<p>All allegations against Departmental employees in the area of child protection that are notified to <u>EPAC</u>, will be assessed and, where appropriate thoroughly and fairly investigated. EPAC will also ensure that information about reportable allegations and conduct is provided to the appropriate agencies.</p> <p>EPAC responds to allegations of a child protection nature against employees. EPAC is responsible for conducting investigations, taking disciplinary or other action where appropriate, and undertaking certain child protection training.</p>
<i>EPAC investigators</i>	<p>EPAC investigators' responsibilities include providing advice and receiving reports about child protection allegations about the conduct of employees with respect to any child, young person or school student aged 18 years or older. Allegations may be notified to the duty investigator verbally (by telephone) or in writing. EPAC investigators are nominated disclosure officers for the purposes of the Public Interest Disclosures Act 1994.</p>
<i>Employee</i>	<p>For the purpose of these procedures an employee is defined as any of the following persons:</p> <ul style="list-style-type: none"> • anyone employed by the Department who receives a payment summary for taxation purposes • any person engaged by the Department, directly or indirectly, including but not limited to: <ul style="list-style-type: none"> ○ contractors, for example assisted school transport drivers, cleaners and maintenance contractors ○ sub-contractors, for example canteen managers ○ volunteers, for example parent helpers or scripture teachers ○ trainees, work experience participants (including school students) ○ clergy, ministers of religion and members of religious orders, and ○ tertiary students who are training in schools.
<i>Notifier</i>	<p>The person who notifies an allegation against an employee to EPAC.</p>
<i>Support person</i>	<p>A person over 18 years who accompanies a witness, complainant or respondent to a meeting or interview to provide support or advice. This may be a union representative.</p>
<i>Nominated disclosure officer (NDO)</i>	<p>An employee of the Department who has been nominated to receive information, from another employee, which may constitute a public interest disclosure, under the Public Interest Disclosures Act 1994. EPAC investigators are NDOs and disclosures may be made by contacting an EPAC investigator on (02) 9266 8070. Public interest disclosure status can only be provided to an employee by making a disclosure directly to an NDO.</p>

Public interest disclosures (PID)

A report of alleged corruption, serious and substantial waste, serious maladministration or a contravention of the [Government Information Public Access Act 2009](#) that meets the following criteria:

- the report is made by a public official about a public official
- the report is made to a nominated disclosures officer (NDO)
- the report is not made in an attempt to avoid disciplinary action
- the reporter has an honest belief on reasonable grounds that the information is correct; and
- the reporter is not questioning the merits of government policy.

A child protection allegation may be treated as a PID in certain circumstances. An employee who makes a report that is a PID is protected from detrimental action or reprisal as a result of making the report. For more information see the [Public Interest Disclosures Management Guidelines 2011](#).

Workplace manager

A workplace manager is the person in charge of a work group. Examples of a workplace manager include: Director Public Schools, Director School Services, Principal, and State Office Director.

6.2. What is an allegation of a child protection nature?

An allegation of a child protection nature is an allegation of misconduct or inappropriate conduct by an employee, which involves conduct with, towards, about, or in the presence of a child or a young person. Such conduct must be notified to EPAC.

6.3. What is a reportable allegation/ reportable conduct?

A reportable allegation is an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct. EPAC must report all reportable allegations to the Ombudsman within 30 days of receipt.

Under the *Ombudsman Act 1974* reportable conduct is defined as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child.

Conduct on the part of a Departmental employee or any individual engaged in providing services to children is reportable whether or not the context of the conduct was the workplace or related to work.

In situations that are not clear, the workplace manager should discuss the matter with an EPAC investigator to clarify what action, if any, is required.

Factors considered by EPAC when making a determination if a matter is reportable conduct include:

- age of the child
- maturity of the child
- health of the child
- any disabilities
- other characteristics of the child
- context in which the alleged conduct occurred.

Types of conduct that may constitute reportable conduct are outlined below. Further details are also contained in the NSW Ombudsman's *Child Protection: Notifying and identifying reportable conduct 2017*.

Sexual offence

All criminal offences involving a sexual element, which are committed against, with or in the presence of a child.

Generally a sustained finding of sexual offence is only made when a court has found that a sexual offence occurred. Caution is exercised when reaching a sustained finding of a sexual offence in the absence of a conviction. However, a finding may be made where the material logically tends to show that all the facts necessary to establish the incident are made out to the reasonable satisfaction of the decision maker. If there are surrounding circumstances which warrant it, the Department will also consider whether or not sexual misconduct has occurred.

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 three categories of sexual misconduct:

- crossing professional boundaries – conduct that can reasonably be construed as involving an inappropriate and overly personal or intimate relationship with, towards or focus on, a child or young person or a group of children or young persons
- sexually explicit comments and other overtly sexual behaviour which may include
 - sexualised behaviour with or towards a child
 - inappropriate conversations of a sexual nature
 - comments that express a desire to act in a sexual way
 - unwarranted and inappropriate touching involving a child
 - personal correspondence and communications (including electronic messaging and using social media) with a child or young person in relation to the adult's intimate or sexual feelings towards the child or young person
 - exposing a child or young person to the sexual behaviour of others, including through exposure to pornography
 - watching children undress in circumstances where supervision is not required and is clearly inappropriate
- grooming behaviour where there is a pattern of conduct that is consistent with grooming a victim for sexual activity. Such types of behaviour may include, persuading a child or group of children that they have a special relationship, testing the boundaries with a child, inappropriately extending the relationship outside work and inappropriate personal communication.

Ill-treatment

Ill-treatment captures those circumstances where a person treats a child or young person in an unreasonable and seriously inappropriate, improper, inhumane, or cruel manner. The focus is on the alleged conduct rather than on the actual effect on the child or young person.

Ill-treatment can include disciplining or correcting a child in an unreasonable and seriously inappropriate or improper manner; making excessive and/or degrading demands of a child; hostile use of force towards a child; and/or a pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

In making a determination about ill-treatment regard is given to the code of conduct, policies and procedures and student plans.

Assault against a child or young person

An assault can occur when a person intentionally or recklessly applies physical force against a child without their consent (actual physical force), or intentionally or recklessly causes a child to apprehend the imminent use of physical force against them without their consent (apprehension of physical force) or disarming a child or young person seeking to harm themselves or others.

Further information is contained in the NSW Ombudsman's factsheet [Defining assault for the purposes of the reportable conduct scheme](#).

Examples of conduct which would not be considered an assault and involve the reasonable application of force would include:

- separating children or young persons who are fighting
- moving a child or young person out of harm's way
- reasonably restraining a child or young person from causing intentional damage to property or people
- self-defence.

Neglect

Neglect includes either an action or inaction by a person who has care responsibilities towards a child. The nature of the employee's responsibilities provides the context against which the neglect needs to be assessed.

Supervisory neglect

- an intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to a child, or
- an intentional or reckless failure to adequately supervise a child, or a significantly careless act or failure to act, that:
 - involves a gross breach of professional standards, and
 - has the potential to result in the death of, or significant harm to, a child.

Carer neglect

- is grossly inadequate care that involves depriving a child of the basic necessities of life, such as the provision of food and drink, clothing, critical medical care or treatment or shelter.

Failure to protect from abuse

- an obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

Reckless act(s) or failure to act

- involves a gross breach of professional standards and has the potential to result in the death of, or significant harm to a child.

Behaviour that causes psychological harm

Behaviour that causes psychological harm is conduct that is obviously or very clearly unreasonable and results in significant emotional harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient in nature.

For reportable conduct involving psychological harm the following elements must be present:

- an obvious or very clearly unreasonable or serious act that the employee knew or ought to have known was unacceptable and
- evidence of psychological harm to the child or young person that is more than transient; and
- an alleged causal link between the employee's conduct and the harm to the child.

6.4. Vulnerability related to health issues and disability

Students with health issues and/or disability are more vulnerable to harm because of their greater dependence upon supports and inherent barriers to expressing their views about their treatment. Employees are required to be responsive and proactive about addressing concerns reported or observed for these students.

Employees must ensure their practices comply with agreed individual plans and departmental and school based behaviour management policies. An employee's compliance with these strategies will be considered when determining the reasonableness of any treatment of a student.

The duty of care owed to a student with health issues and/or disability is significant and should accord with support plans and agreed supervision ratios. Employees who fail to provide adequate supervision commensurate with the student's support needs or neglects a student's care needs may have engaged in misconduct and/or reportable conduct.

Care should be taken not to normalise abusive or restrictive practices that would not be acceptable in other contexts. This can be avoided by:

- ensuring you have the consent of students before physically assisting them
- regularly reviewing school based behaviour management practices and ensuring they comply with departmental policy
- properly documenting and reviewing all incidents involving physical restraint of a student with all relevant parties, including families and carers
- reviewing and updating supports and interventions for a student following a critical incident and at regular intervals
- reporting to EPAC where allegations arise or there is information that an employee's conduct escalated an incident, was unwarranted or unnecessary.

Students with disability may be at particular risk of ill-treatment. Examples of ill-treatment could include:

- secluding a child who has a disability in a store-room or place that is not compliant with Departmental policies
- not allowing a student to have access to food or drink
- making derogatory comments about a child's disability or the effect it may have on them
- restraining a student (unless there is a clearly appropriate strategy which is consistent with Departmental policy and is documented in an agreed learning support plan).

6.5. What conduct is not reportable to the Ombudsman?

Reportable conduct does not extend to:

- 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
- 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
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25C(4) [Ombudsman Act 1974](#).

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 school teacher raising their voice in order to attract attention or to restore order in the classroom; and conduct that is established to be accidental.

6.6. What is the Class or Kind Determination?

Section 25C [Ombudsman Act 1974](#) permits the Ombudsman to determine that certain kinds of allegations or convictions are exempt from the reporting requirements applying to agencies including the Department. In 2017, the Ombudsman revised its 2010 Class or Kind Determination with the Department, exempting certain kinds of less serious allegations from full reporting by the Department under Section 25C of the Act.

EPAC decides which particular allegations are exempt under the Class or Kind Determination. The Department is still required to record, investigate, make a finding and take appropriate action in relation to all matters exempted from notification under the Class or Kind Determination. The Department also, keeps confidential records about the matters not notified and makes them available for audit by the Ombudsman.

7. Procedures for dealing with allegations

7.1. What action is to be taken when there is an allegation of a child protection nature concerning an employee?

If there is information alleging or indicating that a person is engaging in reportable conduct against, towards, involving or in the presence of:

- any child
- any young person
- any school student aged 18 years or older.

The person who becomes aware of the alleged misconduct must inform the workplace manager.

If the allegation involves the workplace manager, the person who becomes aware of the alleged reportable conduct must inform another supervisor or suitable person.

Where the information indicates that there is a risk of significant harm to a child or that there has been conduct which may be criminal the workplace manager should contact the Child Protection Helpline and/or the NSW Police.

The allegation must also be notified to EPAC by the workplace manager, supervisor or (where necessary) by the person themselves. EPAC is also available to provide advice about making a report to the Child Protection Helpline and/or Police.

The workplace manager must notify EPAC of all allegations (including anonymous allegations) verbally or in writing **within one working day** of receipt of the allegation.

Many complaints about employee conduct may not be child protection matters and are capable of being resolved in the workplace by the workplace manager using complaints procedures or performance improvement processes. However, if there is any question about the best way to respond, the workplace manager should contact EPAC for advice.

The workplace manager must respond immediately and in a sensitive manner when they become aware of a child protection allegation against an employee.

The workplace manager must not investigate the allegation or inform the employee but may be requested to clarify the details of the allegation.

The workplace manager should record details of the allegation using the complainant's/witness's exact words to describe the allegation. In some matters, written information such as critical incident reports may have been provided by the complainant or witnesses.

All necessary and reasonable steps are to be taken to ensure the identities of the person(s) who made the allegations, or who are the subject of the allegations, are treated confidentially. However, no guarantee of confidentiality should be given because the identity of those people who are involved in, or witnessed the alleged conduct may need to be provided to the employee who is the subject of the allegation to enable the effective investigation of the matter, or to provide procedural fairness during subsequent disciplinary or legal action.

7.2. Further considerations for students with health issues or disabilities

Information about a child's support needs should be provided to EPAC at the earliest stage to assist in the investigation planning and data collection.

Supporting documentation, such as individual learning plans, behaviour management plans and school based behaviour policies may also be sought. This will assist EPAC to assess risk, determine appropriate action and identify how best to engage and support the student in the investigation process.

It is essential that employees are aware of the barriers to reporting concerns for students with disability. An employee:

- should not make assumptions about the reliability or truth of an allegation by a student or parent or carer on the basis the student has a disability
- should not assume that because a student has a disability they cannot accurately recount an incident
- should let the student give their account of the event in their own words and resist re-interpreting what they are saying
- should promptly and proactively report to EPAC, child protection concerns, unexplained injuries and carer concerns that a student may be at risk from an employee.

7.3. How will EPAC deal with a notification against an employee?

The investigator at EPAC will:

- assess the immediate risks associated with the allegation in conjunction with the workplace manager and consider:
 - the risk to any children, young people, students, employees and to the Department
 - the seriousness and nature of the allegation to determine the appropriate action required
 - whether it is appropriate for the employee to remain on duty
 - the support needs of all those involved.
- enquire if a report has been made to the Child Protection Helpline if the matter relates to a risk of significant harm
- advise the person making the notification what action is to be taken in the short term to ensure the safety, welfare and wellbeing of all those involved, particularly emphasising the importance of confidentiality
- discuss the process that will occur as a result of the notification
- record all available information
- advise the person making the notification to EPAC what information is to be provided by them to the complainant. EPAC may also write to the complainant to acknowledge receipt of the notification
- determine if a notification should be considered a PID
- use all the information obtained to consider EPAC's response and whether the allegation is reportable.

7.4. How does EPAC respond to notifications?

Options for responding to a notification include:

- referring the matter back to the workplace manager for action with no further EPAC involvement because the matter is not reportable. The workplace manager is expected to take appropriate action which will include speaking to the relevant parties to resolve the matter. EPAC may follow up with workplace managers, to confirm what action has taken place or to review the supporting documentation
- overseeing the local management of the matter in consultation with the workplace manager (*See Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees*)
- investigating the matter under the relevant guidelines and where the allegations are reportable, notifying the Ombudsman about the allegations within 30 days.

7.5. Using a Local Management response under EPAC's oversight

Local management may be used when EPAC determines an allegation against an employee can be dealt with at the local level with EPAC oversight.

Before determining whether a matter is suitable for local management, EPAC will have a discussion with the workplace manager to determine whether local management is appropriate. Local management will only proceed if the workplace manager and the employee agree to the matter being dealt with by the workplace manager. In some circumstances, an alternative manager may be sought to undertake the local management response. If there is not agreement by both parties, the matter may proceed to an investigation.

The *Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees* provide assistance to the local manager by giving guidelines, a checklist of required action and forms to document the outcomes of the process. The procedures also explain what completed documentation is provided to the employee. The EPAC investigator will provide direct support to all local managers who are looking into less serious allegations.

All documentation is returned to EPAC at the completion of the process. EPAC makes the final determination about the completion of the matter and conveys that information to the workplace manager who will inform the employee and other relevant parties (such as parents and carers).

While these procedures allow management of less serious allegations at the local level in a timely manner, matters will be reported to the Ombudsman if there is information that the allegations constitute or may constitute reportable conduct.

7.6. The EPAC investigation response

In cases where FACS or NSW Police are investigating, EPAC is usually required to wait for clearance before commencing its investigation. In some cases a Departmental investigation will take place in conjunction with FACS and/or the NSW Police. EPAC liaises with other agencies to ensure that investigations are not unduly delayed. However, the time taken to complete an investigation and finalise a matter is, at times, beyond the Department's control. Information will only be provided to the employee at this stage with the consent of the other investigating agencies.

When EPAC is the only investigating agency, the investigator, in consultation with EPAC senior officers, determines what information will be provided to persons involved in the matter during the course of the investigation. This includes information provided to the employee against whom the allegation has been made.

The employee is informed about an investigation and whether the allegation has been reported to the Ombudsman as soon as practical. The employee is advised of the content of allegations that may result in action being taken against them and given the opportunity to respond in writing or at interview. This should occur as soon as it is clear what the issues are.

During an EPAC investigation, applications from the employee for long service leave, leave without pay, separation from the Department, participation in teacher exchange, or the issue of a record of employment will be considered on a case by case basis by a senior EPAC officer.

Similarly, during an EPAC investigation, applications for promotion, transfer and for permanent, temporary or casual employment will be considered on a case by case basis.

The employee will be informed if EPAC has recommended that any such application is to be held pending the outcome of an investigation.

7.7. What happens during an EPAC investigation?

The Department has *Guidelines for the Management of Conduct and Performance* which apply generally to:

- officers (permanent employees) who are employed under the *Teaching Service Act 1980*
- persons who are permanently employed under the *Education (School Administrative and Support Staff) Act 1987*.

While the Guidelines do not apply to employees who are employed under other legislation and awards or to casual and non-permanent employees, EPAC conducts all its investigations to ensure that the procedural requirements set out in the Guidelines are adhered to, specifically:

- investigations are conducted by trained and impartial investigators
- the investigation is carried out in a confidential manner
- the absence or unavailability of the person who is the subject of the allegations will not preclude the investigation taking place
- allegations will be put to the person who is the subject of the allegations
- the person, the subject of the allegations will be given the opportunity to respond to the allegations
- employees will be notified and formally advised about any interviews
- interviews are conducted fairly and, where desired, in the presence of a support person
- the outcome of the investigation is based on a consideration of all the available evidence
- the person, the subject of the allegation is advised of any proposed adverse finding and outcome and given the opportunity to make submissions to the decision maker.

7.8. The investigation process

<i>Step 1: Initial action</i>	<ul style="list-style-type: none">• assess risk to manage the safety of all those involved in the allegation including the employee, any children, young people or students• develop investigation plan.
<i>Step 2: Interviewing witnesses</i>	<ul style="list-style-type: none">• questions relating to the allegation such as “who”, “what”, “when”, “where” and “how” will provide the basis of the interview• face to face interviews will be held in isolation from other witnesses• in some circumstances, witnesses and other parties may be interviewed by telephone or video conference. The person being interviewed will be informed in advance of an interview• statements may be prepared by EPAC for the witness to sign following an interview even when an electronic record is made. If a statement is prepared, a copy will be offered to the witness.
<i>Step 3: Collection and analysis of evidence</i>	<ul style="list-style-type: none">• documentary evidence such as photographs, emails, and workplace or Departmental records may be obtained• the Department may seek relevant information from other agencies including FACS and NSW Police• a site inspection may be carried out• expert evidence such as technical and forensic advice may be obtained• an investigation may, where relevant, include an interview of the employee connected with the allegation or incident and/or taking a statement from the employee. Employees will be informed of their rights prior to the interview being conducted.
<i>Step 4: Putting the allegation(s) to the employee</i>	<ul style="list-style-type: none">• after a careful analysis of all the available evidence, the allegation(s) will be put in writing to the employee who will then be given the opportunity to seek advice and formulate a response if they wish to. In some cases, when there is insufficient evidence to warrant putting allegations to an employee, EPAC may terminate the investigation.
<i>Step 5 Conducting an interview with the employee</i>	<ul style="list-style-type: none">• if an employee agrees to be interviewed, a suitable location for the interview will be negotiated giving regard to privacy, confidentiality and minimal disruptions• employees may choose to have a support person present (see Section 10 for information about the role of the support person)• if the employee consents, an electronic record of the interview is made• any documents that are shown to the employee will be clearly identified and preserved• the employee will be offered a copy of the record of interview.

Step 6: Decision making

- if the employee does not respond to the written allegations it will be deemed that the employee has denied the allegations
- the investigator prepares an investigation report that recommends:
 - further analysis or investigation, or
 - that the matter be finalised as there is no case for the employee to answer, or there is insufficient information to support the allegation
 - that there is sufficient material/information for a decision maker to find misconduct and to consider disciplinary/remedial and/or other action such as reporting sustained findings of sexual misconduct or serious physical assault to the OCG.
- if the decision maker is contemplating taking any action the person who is subject of the allegation will be advised of the proposed action, the reasons for the proposed action and offered the opportunity to make submissions. Any such submissions are given consideration by the decision maker before making the final decision.

7.9. The outcome of the investigation

The employee will be advised in writing of the outcome of the investigation.

If it has been found that the alleged conduct constitutes misconduct, the decision maker has a number of disciplinary options including:

- dismissal
- directing the employee to resign or allowing the employee to resign
- reducing the employee's salary or demoting them to a lower position
- imposing a fine
- cautioning or reprimanding the employee.

The decision maker may also conclude that while there has been misconduct, it is appropriate to take remedial action such as:

- counselling
- providing training and development
- monitoring the conduct of the employee
- issuing a warning and offering assistance to meet the expected standard
- transferring the employee at their current pay rate
- providing induction or mentoring
- referring the employee to the relevant policies; and/or
- other action of a similar nature.

It is also open to the decision maker to take a combination of disciplinary and remedial action or not to take any action at all.

The employee will be provided with information about supports available to them during the process.

7.10. Reporting findings to the OCG

Section 35 of the *Child Protection (Working with Children) Act 2012* requires the Department of Education to notify the OCG of the name of the employee and other relevant identifying particulars when the Department has made a finding of:

- sexual misconduct; or
- a serious physical assault of a child.

The Department is required to notify the OCG about the finding in order for the Children's Guardian to consider whether it is necessary to conduct a risk assessment in relation to that person being in child related employment. If the finding is reported to the OCG, the employee will be informed about this in writing.

7.11. Finalising an investigation

EPAC records the outcome of the matter in a case management system. All documents relating to the investigation remain confidential and are held separately from the employee's personnel file, and with restricted access in accordance with the *State Records Act 1998*.

If the alleged conduct is reportable, a copy of all the documentation is provided to the Ombudsman which is required to oversight all reportable conduct matters. The Ombudsman also accepts complaints about the way in which reportable conduct matters have been handled by agencies.

The workplace manager is also provided with a letter about the outcome of the matter and will be requested to return any relevant material to EPAC.

Employees who have been the subject of an investigation may seek further information or may take the opportunity to provide information or comment on the outcome. Employees may also seek to have an interview with an EPAC officer about the outcome.

Complainants and/or parents or caregivers will also be given some information about the outcome of the matter. The name of the employee will not be provided in the outcome letter.

If the employee has been transferred to alternative duties or suspended from duty during the investigation and the outcome is not termination of employment, EPAC will negotiate for the employee to return to their workplace. In some circumstances, a transfer or an alternative placement may be negotiated in consultation with EPAC.

7.12. Contractors and volunteers

If the matter involves an Assisted School Travel driver, EPAC will advise the Assisted School Travel Unit of the Department about the actions to be taken.

If the matter involves a contract cleaner, EPAC will provide advice to the Contract Monitoring Unit of the Department of Finance Services and Innovation detailing the actions to be taken. The Government Services Unit will then report to EPAC the action that has been taken with respect to the cleaner.

If the matter involves a volunteer and there is a need to limit the volunteer's access to school students, EPAC will determine what action will be taken and will advise the volunteer and the workplace manager.

7.13. What if the employee resigns during the investigation?

If an employee resigns before the completion of a child protection investigation, the Department will decide whether to complete the investigation and make findings, or whether to suspend the investigation.

It is open to the Department to consider providing information to the OCG under the information exchange provisions of the child protection legislation if there is evidence that a person may pose a risk to children, so that the Guardian may consider a risk assessment or requiring the person to apply for a WWCC clearance so that a risk assessment may be conducted.

7.14. What is the process for responding to allegations of misconduct or improper conduct against students over 18 years?

Allegations of misconduct by an employee against a student who is aged 18 years or older are not reportable conduct allegations but will be dealt with by EPAC.

7.15. What action should be taken about allegations about former employees and historical allegations

EPAC should be advised of allegations raised about former employees. Former employees may engage in other child related employment and proper checks need to be undertaken of their employment status.

EPAC does not investigate allegations raised after an employee has left the Department. However, EPAC will work with Principals/Workplace Managers to ensure that appropriate reporting occurs and risk management action is taken. This includes advising other agencies, managing risk should the employee seek to re-engage in employment and providing support to victims where appropriate.

7.16. Reporting children and young people who engage in problematic or sexually harmful behaviour

EPAC should be advised of a failure by an employee to properly respond to matters involving child and young people who engage in problematic or sexually harmful behaviour.

Incidents of children and young people engaging in such conduct towards other children may reach the threshold for reporting to the [Child Protection Helpline](#). The mandatory reporter guide will assist the reporter. These matters do not need to be reported to EPAC.

Appropriate plans and support should be put in place by Principals in conjunction with involved agencies (including FACS, NSW Health and Police) to ensure the safety and welfare of all parties including the child engaging in the problematic or sexually harmful behavior, the alleged victim and students more broadly. Protective action/intervention will need to be taken even where other agencies do not become involved. Failure to appropriately plan or report matters may place students at risk.

Care should be taken not to minimise or dismiss young people's problematic or sexually harmful behaviour as experimentation, play, symptomatic of a disability or as a 'phase' that will pass with age.

Such behaviour may involve:

- the use of pressure, coercion, aggression, bribery, secrecy or other grooming behaviour to engage in the conduct with children (or with peers) is always abusive
- significant age, size, social and emotional differences between the children
- behaviour that goes beyond 'normative' sexual play
- When lower-level sexual behaviour is addressed with the child and becomes compulsive, excessive or intensifies.

Where criminal proceedings are unlikely because of the age of the child or for other reasons, protective and therapeutic responses are still required to address the behaviour. Refer to the Department's policy on problematic and sexually harmful behavior in students for further information.

It is important that students are not socially isolated, have opportunities to continue their education and continued peer interaction. However, a duty of care remains for other students and their safety is a paramount concern that should be well managed.

7.17. What happens if an employee fails to report

Failure to report or respond to matters relating to employees, former employees and child protection concerns may place children at risk of further harm and is treated seriously by the Department. An employee who fails to report child protection concerns may become the subject of an investigation on the basis of a breach of the [Code of Conduct](#), this policy, mandatory reporting requirements and as a reportable allegation of neglect.

8. The disciplinary process

8.1. Legislation under which disciplinary action occurs for permanent employees:

- Teaching Service Act 1980 and the Education Regulation 2012
- Education (School Administrative and Support Staff) Act 1987
- Government Sector Employment Act 2013 and Government Sector Employment Rules 2014.

8.2. Guidelines for disciplinary procedures

The disciplinary process for permanent employees employed under the [Teaching Service Act 1980](#) and the [Education Regulation 2012](#), the [Education \(School Administrative and Support Staff\) Act 1987](#) is outlined in the [Guidelines for the Management of Conduct and Performance](#).

While the Guidelines do not apply to persons who are employed on a probationary, temporary or casual basis, the principles of procedural fairness are consistently applied and the investigation process is very similar.

The disciplinary process for employees employed under the [Government Sector Employment Act 2013](#) is to be consistent with the [Government Sector Employment Rules 2014](#). Further guidance can be found on the employment portal on the [Public Service Commission website](#).

8.3. Investigations into allegations against contractors, sub-contractors and volunteers

Although not subject to specific employment legislation and disciplinary schemes, contractors, volunteers or other persons associated with Departmental sites may have contracts or services terminated, or access to Departmental sites or involvement in the Department's activities restricted or terminated during and/or following an EPAC investigation. This may include termination of assisted school transport contracts.

9. The Working with Children Check and the Office of the Children's Guardian

The Office of the Children's Guardian (the OCG) is an independent government agency that works to protect children by promoting and regulating quality, child safe organisations and services and administers the Working with Children Check in NSW.

9.1. The Working with Children Check

By the end of 2018, all Departmental employees and volunteers who are deemed to be in child related work must have a Working with Children Check clearance (WWCC).

The result of a WWCC is either a clearance to work with children or a bar against working with children. Anyone who is cleared to work with children is subject to ongoing monitoring and any new records may lead to a WWCC clearance being revoked.

The WWCC involves a national criminal history check and a review of relevant findings of workplace misconduct. The records that are assessed include: convictions (spent and unspent); charges (whether they have been heard, unheard or dismissed); and juvenile records.

Convictions or pending charges for certain offences will lead to an automatic bar against working with children. A list of these offences appears at Schedule 2 of the Child Protection (Working with Children) Act 2012. Equivalent records in any other state will also lead to an automatic bar. A conviction includes a finding of guilt that may not be recorded by the court as a conviction.

9.2. Risk assessment and the OCG

Certain records and circumstances cause the OCG to conduct a risk assessment in relation to persons who hold or have applied for a WWCC.

Schedule 1 of the Child Protection (Working with Children) Act 2012, sets out a number of offences and the circumstances which will trigger the OCG to conduct a risk assessment. This includes convictions (spent or unspent), charges (heard, unheard or dismissed) and juvenile records.

The OCG will also conduct a risk assessment when a reporting body, such as the Department, has notified or is notifying the OCG that a person, who is applying or has applied for a WWCC clearance, has been the subject of a finding that they have engaged in:

- sexual misconduct committed against, with or in the presence of a child, including grooming of a child and/or
- any serious physical assault of a child.

When conducting a risk assessment, the OCG must consider factors relating to the conduct such as:

- seriousness
- length of time since it occurred
- age and vulnerability of the alleged victims since it occurred

- relationship between the applicant and the victim
- age difference between the applicant and the victim
- whether the applicant knew or could have known that the victim was under 18 and
- any information provided by the applicant for the WWCC.

9.3. Bars and interim bars from working in child related employment

The OCG must not grant a WWCC clearance to a person who is charged or convicted of an offence set out in Schedule 2 of the [Child Protection \(Working with Children\) Act 2012](#). In some cases a person, who is disqualified from child related employment under Schedule 2, may apply to the [NSW Civil and Administrative Tribunal Act 2013](#) (NCAT) for an enabling order declaring that the person is not to be treated as a disqualified person.

If a person is charged with one of the offences set out in Schedule 2, the OCG will impose a bar. There is no right of appeal in relation to the imposition of a bar while court proceedings are still taking place.

In some cases, the OCG may impose an interim bar while a risk assessment is under way. An interim bar may be applied for up to 12 months. There is no right of appeal in relation to the imposition of an interim bar before a period of six months has lapsed.

If, having conducted a risk assessment, the OCG forms the view that a person poses a real and appreciable risk to children or young persons, the OCG may impose a bar on a person engaging in child related employment for up to five years. Appeals against the imposition of a bar can be lodged with NCAT.

9.4. The Government Information (Public Access) Act 2009 (GIPA) and the OCG

Employees who have been the subject of findings of sexual misconduct towards or a serious physical assault of a child or young person, notified to the OCG, may make an application [under GIPA](#) to the OCG for the relevant documents.

10. Support

10.1. Role of the support person

The role of a support person is to provide support and assistance to the child, young person or employee at an interview or meeting.

The support person must be over 18 years. The support person can be a representative of a union or a legal practitioner.

The person conducting the meeting or interview must ensure that the support person is advised that their role is one of support, and that strict confidentiality must be maintained.

Providing support to a person is voluntary and an employee requested to undertake this role has a right to decline. A person should not accept the role of support person if they are aware of any conflict of interest concerning the allegations, or if they have information relevant to the investigation.

The support person is not an advocate and cannot answer for the employee.

The form of support and assistance may vary according to the circumstances of the interview. This support and assistance could include any or all of the following:

- taking notes
- providing advice on rights/entitlements
- suggesting a temporary pause of the interview to assist the person and
- seeking further advice.

Where the support person is assisting a child, young person or employee at an investigation interview, what takes place at the interview becomes part of the investigation and must remain confidential, unless otherwise required by law. Employees and others who attend interviews as a support person may, at their discretion, make a written record of the interview. The support person should be aware that they, and/or their notes, may subsequently be required in court or disciplinary proceedings.

10.2. How is the employee who is the subject of the allegation supported?

Employees who are the subject of an allegation are able to obtain support and advice from principals or executive officers at their worksite, and/or Health and Safety (H&S). They may also seek the support and advice of their relevant union or union representative.

Employees may also be entitled to support through the Employee Assistance Program (EAP) though it should be noted that EAP counsellors may be subpoenaed to a court proceeding.

Casual staff should check their entitlement to access the EAP with the appropriate H&S staff and, may choose to access support through health services. Support is also available from relevant trade union representatives (see Appendix 3 for contact details).

10.3. What support is available for alleged victims and witnesses?

Children or young people who are victims or witnesses in a matter that relates to an employee need sensitive, ongoing support from the time that the matter is raised. Every effort must be made to ensure that all children or young people in this situation are treated fairly and with respect.

Workplace managers must ensure that children and young people are informed of:

- their right to be treated fairly and without discrimination or intimidation
- their right to choose not to be interviewed or give a statement
- their entitlement to support; and
- the support services available to them, both from the Department and other agencies.

Support may involve a school counsellor, school psychologist or an alternative Departmental employee with whom the child or young person feels comfortable and who is available and willing to provide on-going support until the matter is finalised. Children and young people can also request assistance from the [Child Protection Helpline](#) (telephone 132 111). Support for children and young people will be arranged in close consultation with them and wherever possible, their parent/s or caregivers.

When interviews are to be conducted with children or young people at school, EPAC may request the workplace manager to make arrangements for interviews on its behalf and in these cases will give advice about the information to be provided to the child or young person.

In summary, workplace managers need to:

- advise the child or young person that they may choose not to be interviewed at school or another Departmental site
- advise the child or young person that they can have a support person in the interview
- where the interview is to go ahead at school, plan a satisfactory location and arrangements in consultation with EPAC. (All attempts must be made to choose a venue for interviews that is neutral to the child or young person.)

Children or young people may not be comfortable about members of staff being present at interviews as they are persons in positions of authority. As far as possible, workplace managers should ensure that children and young people feel comfortable with their support person.

If children or young people attend formal proceedings to provide evidence, support may be provided by an employee and may include:

- meeting with the children or young people and their parents or caregivers
- attending formal meetings that the children or young people, parents or caregivers are required to attend
- attending the inquiry with the children or young people, parents or caregivers and
- liaising with the children or young person's school to ensure pre-inquiry or post-inquiry support.

Parents should be notified of interviews unless a student aged 17 years or older, requests that their parents not be advised and there is a good reason not to do so.

If a child or young person is required to appear before a court in criminal proceedings it is the responsibility of the Police and/or the Office of the Director of Public Prosecutions (ODPP) to ensure that the child or young person is appropriately prepared to appear as a witness. In some circumstances they can be referred to the Witness Assistance Service of the ODPP. The service includes preparing the child or young person and other witnesses to give evidence in court, providing court support and debriefing, assessment and referral to other services and facilitating liaison between victims, witnesses and the prosecution lawyers.

Employees who assist at the notification stage may also require support from workplace managers, unions and Departmental sources, should a matter proceed to Court.

If EPAC requires witnesses to participate in the disciplinary process, EPAC will ensure that appropriate supports are arranged and provided.

10.4. Victims Services and Support

Victims Services and Support provides support services, including free counselling and financial assistance to victims of crime. Victims have rights which are set out in the Charter of Victims' Rights. For more information please see [Victims Support Services](#).

10.5. Legislation relevant to child protection

- [The Ombudsman Act 1974](#)
- [Children and Young Persons \(Care and Protection\) Act 1998](#)
- [Child Protection \(Working with Children\) Act 2012](#)
- [Child Protection \(Offenders Registration\) Act 2000](#)
- [Public Interest Disclosures Act 1994](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [Work Health and Safety Act 2011](#)
- [Work Health and Safety Regulation 2011.](#)

10.6. Relevant legislation, regulations and determinations concerning the disciplinary process for Departmental employees

- [Teaching Service Act 1980](#)
- [Teaching Service Regulation 2012](#)
- [Education \(School Administrative and Support Staff\) Act 1987](#)
- [Education \(School Administrative and Support Staff\) Regulation 2013](#)
- [Government Sector Employment Act 2013](#)
- [Government Sector Employment Rules 2014.](#)

10.7. Related Department of Education policies

- Guidelines for the Management of Conduct and Performance
- Code of Conduct
- Leading and Managing a School
- Policy for Protecting and Supporting Children and Young People
- Public Interest Disclosures Internal Reporting Policy
- Complaint Handling Policy and School and Community and Staff Complaints Procedures
- Child Protection Procedures for the Local Management of Less Serious Allegations against DET Employees.

10.8. Other NSW government agencies and related policies and legislation

- New South Wales Interagency Guidelines
- Working with Children Check – information and fact sheets
- NSW Ombudsman and Employment Related Child Protection
- NSW Justice Victim Services and Support
- NSW Public Service Commission
- State Records Act 1988.

11. For further information

Any enquiries concerning these procedures are to be directed to EPAC by email to EPAC@det.nsw.edu.au or by telephone on (02) 9266 8070.

12. Appendices

12.1. Appendix 1 – Guide to notification information and process

Steps to reporting child protection allegations

- workplace manager to record details about an allegation of a child protection nature against an employee, upon receipt of the advice. Such information is to be treated with the utmost confidentiality
- report to Child Protection Helpline if the child or young person is at risk of significant harm
- notify EPAC on telephone (02) 9266 8070 within **1 working day**, providing all available information including contact details for students, parents, employees and any witnesses
- advise relevant parties of the notification to EPAC and remind them of the need for confidentiality, in particular, parents or carers of children directly affected by the allegation(s)
- obtain advice from EPAC on what action will occur.

Information required when reporting to EPAC

When notifying EPAC you will need to provide information about:

- the nature and details known about the allegation
- risks to any children, young people, students, employees or the Department
- details of any injuries sustained
- the details of the person who has contacted EPAC
- the name and contact details of the person who first made the allegation
- the names and ages and contact details of the children or young people affected by the alleged conduct
- the names, addresses and contact details for parents or caregivers of the children or young people involved
- the name, position and contact details of the employee against whom the allegation has been made
- whether the employee already knows about the allegation and the circumstances under which they learned of the allegation (the employee is not to be informed of the allegation without the advice of EPAC)
- whether the matter has been reported to the Child Protection Helpline and/or Police, the outcome of their assessments of the matter and if known, the reference numbers provided
- whether any children or young persons involved have a disability (i.e. were they identified as such in the National Collection of Disability Data in Schools)
- whether provision of special assistance is required in relation to language, culture or disability for any person involved
- any written accounts about the alleged incident, including copies of your notes
- the relevant family circumstances and parental risk factors impacting upon a student
- what counselling or other support have been arranged or need to be arranged for those involved including students and employees.

Additional Information that may be requested

After contacting EPAC you may be asked to obtain:

- written witness accounts
- a written account from the employee
- student plans including individual education plans, behaviour management plans
- location photographs
- relevant school policies
- CCTV footage
- documentary evidence include
- attendance records.

All information should be provided to EPAC within **2 working days** of your notification.

Responsibilities of workplace managers following EPAC assessment

Following assessment of child protection allegations by EPAC the workplace managers:

- addresses the matter by taking **direct action** such as utilising complaints processes, advice and support to an employee or performance management procedures
- or**
- follow **local management** action (see checklist within the *Procedures for the Local Management of Less Serious Allegations in the Area of Child Protection Against DET Employees*) 18 March 2003
- or**
- co-operate with EPAC regarding **investigation** process
- and**
- return all documentation to EPAC at the completion of the local management or EPAC investigation process.

12.2. Appendix 2 - A guide for teaching and protecting children and young people

The following information will help teachers identify appropriate professional practice in their conduct with students. The material below is not exhaustive but is provided as a guide to common situations.

Good or acceptable practice

1. *School and classroom culture:*

- develop school and classroom routines or structures that have clear boundaries of acceptable and professional student/teacher interaction
- implement Department and school guidelines that help prepare and plan such educational activities as excursions. Professional conduct and supervision levels need to respond to the age of students and the educational context
- know the school's student welfare and discipline policies and use behaviour reinforcement strategies that follow these policies
- develop a non-confrontational behaviour management style; and
- respond to provocative behaviour by students, parents or members of the school community in a non-confrontational, calm manner to help defuse difficult situations
- seek support from colleagues or supervisors where needed – in extreme situations the principal can call police to protect staff and students.

2. *Care and discipline of children:*

- report and document incidents involving physical restraint of students or violence involving students. This provides important information if an allegation is made about the related conduct of a staff member
- actively supervise students when on playground duty
- clearly instruct and carefully supervise students operating equipment
- provide correctional feedback on student work in a constructive way
- when confiscating personal items, such as mobile phones or hats, ask students to hand them to you. Only take items directly from students in circumstances where concern exists for the safety of the student or others and your own safety is not jeopardised by this action; and
- when playing physical sport with children, consider the physiques of students, along with the relative ages and stages of development of all participants.

3. *Teacher-student relationships:*

- participate in social contact with a student only after obtaining informed consent of the student and the parent (and principal where appropriate); such contact includes meetings, sporting events, phone calls or electronic communications, e.g., emails and text messages
- when acting as a student's mentor, develop a relationship with clear professional boundaries that cannot be misinterpreted as a personal, rather than a professional, interest in the student
- if a student develops a 'crush' on you, inform a supervisor, so independent, sensitive advice and support are available
- praise and recognise all students when appropriate, so they all feel fairly treated
- physically contact students in a way that makes them comfortable, e.g., shaking hands, a congratulatory pat on the back, or with very young students by gently guiding them or holding their hand for reassurance or encouragement

- when students, particularly very young children, are hurt and seek comfort, it is appropriate to provide reassurance by putting an arm around them
- be alert to cues from students about how comfortable they are in your proximity and respect individual needs for personal space. If teachers physically contact students in class demonstrations, such as PE or drama lessons, explain the activity involved and what you will do
- be aware of cultural norms that may influence interpretation of your behaviour towards students; and
- follow Departmental guidance on the appropriate use of social media with students.

4. *Interaction with students with identified needs:*

- be especially sensitive interacting with students who may have poor 'boundaries' for appropriate behaviour after being traumatised by physical, emotional or sexual abuse, because they may misinterpret your actions; and
- Schools for Specific Purposes and those in Juvenile Justice Centres have particular requirements for child protection, due to the needs of students. Therefore, careful training, planning, programming, documenting and reporting will help protect students from neglect or abuse, and staff from complaints or allegations. Awareness by all staff, including non-teaching staff, and where appropriate parents or caregivers, of appropriate strategies and their purpose with individual students is desirable and this will usually be gained in the development of individual management programs.

Poor or unacceptable practice

1. *School and classroom culture:*

- excluding students from a lesson or activity, then leaving them unsupervised in corridors, classrooms or storerooms
- leaving a class unattended or dismissing students early from a lesson so that they are unsupervised
- not reporting concerns about risk of harm to a child or misconduct of a staff member towards a student
- attempting to physically prevent a student from entering or leaving a classroom, unless there is a concern for the safety of the student, other students or staff
- closing doors or windows to rooms without checking students are safely out of the way
- pursuing a student who is attempting to run away unless that student is in immediate danger or is likely to harm another person
- shouting angrily at students to intimidate them; and
- commenting to or about students on the basis of disability, gender, sexuality, cultural or racial stereotypes.

2. *Care and discipline of children:*

- public disciplining or humiliating a student as punishment or as an example to other students
- throwing an object, such as an eraser, pens, ball or book, at a student to get their attention
- threatening students with physical punishment

- corporal punishment, such as hitting, smacking or caning, of students is prohibited
- providing inadequate supervision for students while on duty during excursions
- not appropriately responding to or referring clear requests from students for medical or first aid attention
- arranging activities or meetings alone with a student that are not within school guidelines or that are without the informed approval of a supervisor and, if appropriate, the parent or caregiver; and
- targeting students unfairly for criticism or prejudging complaints from other staff or students about their behaviour based on past conduct.

3. *Teacher-student relationships:*

- teasing students or unfairly withholding praise from them
- putting your arms around students while instructing them on the computer
- developing a practice of cheek kissing as a greeting or for congratulating students
- repeatedly and unnecessarily touching students on the back, shoulders, arms or legs
- allowing a student to sit on your lap
- undressing in front of a student, e.g., in PE or activity centre change rooms
- giving gifts or money to students as a reward or incentive for good behaviour or as a gesture of friendship
- conversing about sexual matters unrelated to a syllabus
- telling jokes of a sexual nature
- making sexually suggestive remarks or actions, obscene gestures or showing inappropriate videos; and
- deliberately exposing a student to the sexual behaviour of others, including access to pornography.

Practices in the following three bullet points are prohibited (and may also be criminal acts):

- employees must not have sexual relationships with students. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non-consensual or condoned by parents or caregivers (the ages of the students or staff members involved are also irrelevant)
- teachers must not give students alcohol or other drugs (except prescribed medication in accordance with Department and school policy), or encourage or condone the use of alcohol or other drugs by students; and
- teachers and employees must not possess, download to a computer or distribute child pornography.

4. *Interaction with students with identified needs:*

- using unnecessary force to make physical contact with a student as a prompt for a verbal instruction or to force compliance
- failing to implement strategies negotiated and outlined in individual student management programs; and
- using physical contact to contain confrontational behaviour of students of all ages (particularly those with identified behaviour or conduct disorders) unless there is a concern for the safety of the student, other students or staff.

12.3. Appendix 3 - Useful contact numbers

Organisation	Contact
Department of Education Child Protection Services	T: 9269 9400 F: 9269 9444 https://education.nsw.gov.au/student-wellbeing/child-protection
Child Protection Helpline Community Services Head Office	Tollfree: 132 111 T: 9716 2222 F: 9716 2999 How to make an e-Report www.facs.nsw.gov.au
Employee Assistance Program: <ul style="list-style-type: none"> • Davidson Trahaire Corpsych • Optum (for post-incident support) 	Tollfree: 1300 360 364 http://www.davcorp.com.au/ Tollfree: 1300 361 008 http://www.optum.com.au/
Employee Performance and Conduct Directorate	T: 9266 8070 F: 9266 8077 https://education.nsw.gov.au/epac
Independent Commission Against Corruption	Tollfree: 1800 463 909 T: 8281 5999 F: 9264 5364 E: icac@icac.nsw.gov.au www.icac.nsw.gov.au
NSW Ombudsman	1800 451 524 T: 9286 1000 F: 9283 2911 E: nswombo@ombo.nsw.gov.au www.ombo.nsw.gov.au
Office of the Children’s Guardian (WWCC)	T: 9286 7219 F: 9286 7201 E: check@kidsguardian.nsw.gov.au www.kidsguardian.nsw.gov.au
Public Service Association	Tollfree: 1300 772 679 http://psa.asn.au/

School Education Area Staff including:	131 536
<ul style="list-style-type: none"> • Directors Public Schools • Directors Educational Services • Staff Support Officers • Learning and Wellbeing Officers and Advisors 	
Teachers Federation	Tollfree: 1300 654 369 T: 9217 2100 www.nswtf.org.au
Victims Support Services	Tollfree: 1800 633 063 T: 8688 5600 www.victimsservices.justice.nsw.gov.au
Witness Assistance Service (Department of Public Prosecutions)	Tollfree: 1800 814 534 T: 9285 8606 www.odpp.nsw.gov.au
NSW Health Sexual Assault Services	Contacts