

## Student Incident Processes (Torrens Park Campus)

Scotch College implements a range of policies that are designed to ensure the effective operation of the school, including the safety and wellbeing of its staff and students. The purpose of this document is to outline the principles and processes that are followed when a serious contravention of a policy by a student has occurred. This document should be used in conjunction with the relevant school policy and is intended to guide staff, students and parents through the investigation of an incident and the potential outcomes. This procedure will be reviewed periodically by Senior Staff and council and is not for wider dissemination beyond the Scotch College community.

### Guiding Principles

- The College is committed to transparency and fairness in its dealings with its students and parents. In rare circumstances where a major infringement of the College's policies has occurred, a fair and open process should be available to students and parents.
- The College believes in the principles of natural justice
- All decisions are made on the balance of probabilities.
- The College believes disciplinary decisions for students must never be taken lightly, but in the context of what is best for them and the larger community.
- The College aims to be a well-ordered school and to honour legal and educational responsibilities.

### Related Policies and Procedures:

- Safety, Wellbeing and Inclusion Policy (Torrens Park Campus)
- Digital Technologies Policy (Torrens Park Campus)
- Substance Abuse Policy (Torrens Park Campus)
- Suspension and Termination Policy
- Student Management Processes for Boarding

### 1. Natural Justice

Natural justice applied to individuals are based on two rules:

- the rule against bias
- the fair hearing rule

#### 1.1 The Rule Against Bias

The rule against bias in an administrative matter does not require bias to be proved, rather that there is a real likelihood that it exists. The need to monitor one's own bias and consult where one feels a danger of pre-judging is very important.

Hence, any investigations into incidents, or decisions made regarding the outcomes of any investigations, are not conducted, discussed and/or decided by a singular member of staff; they seek the council of other staff to reduce the likelihood of impact of any potential bias.

## 1.2 The Fair Hearing Rule

The fair hearing rule has several aspects:

### 1.2.1 The Right to Know the Matters Alleged

If the decision is to be made about a person, then that person must be entitled to know any allegations made against them and any matter which will be taken into account by the decision maker. The decision maker must not assume that it is obvious that, for example, previous or similar behaviour or the severity of behaviour, has been part of the decision of the sanction.

### 1.2.2 The Right to Respond

The person has a right to respond to the allegation. The person against whom the allegation is made must have a real opportunity to respond and have their views and experience heard. It has been suggested that the right to be heard extends to questioning of witnesses and other third parties. There are many reasons why this may not be appropriate in schools. However, one way of addressing this is to invite the person against whom something has been alleged to name others that the investigator will interview

### 1.2.3 The Right to Access Support

The right to be aware of and respond to allegations is meaningless if the person is not fully able to comprehend or respond properly. The concept of some advocacy or support may be relevant for a number of students (e.g. a counsellor, trusted teacher, AEW, ESO, Bilingual ESO). This may be a question of capacity (e.g. NESB, intellectual impairment, mental illness) or a question of cultural understanding, emotional distress or power imbalance. *The right to representation also applies to parents at suspension and exclusion conferences.*

### 1.2.4 The Standard of Proof

Administrative decisions have as a standard of proof “the balance of probability”, i.e. the decision-maker must decide that, on the evidence, one version is more probable than the other. However, the onus is still on the person making the allegations to satisfy the decision maker rather than on the person complained of to prove their innocence. One area where this can be problematic for school leaders is where it is the teacher’s word against a student’s. It would not be natural justice to assume that, prima facie, a teacher is more honest than a student. In this situation, it is strongly urged that other parties be interviewed to seek further information.

### 1.2.5 Decisions Based on Relevant Evidence

Evidentiary rules of court do not apply. However, administrative decisions must not ignore pertinent evidence or take irrelevant factors into account. It is appropriate to consider any other penalty the party has already incurred as a result of their actions.

*The information above has been drawn from: ‘A Procedural Fairness Manual for Australian Schools’ from the National Children’s and Youth Law Centre (1999).*

## 2. Procedural Fairness

Procedural Fairness is concerned with the procedures used by a decision maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. It is considered highly likely that a decision-maker who follows a fair procedure will reach a fair and correct decision. The term 'procedural fairness' is thought to be preferable when referring to administrative decision-making because the term 'natural justice' is associated with procedures used by courts of law. However, the terms have similar meaning and commonly used interchangeably.

Scotch College aims to use procedural fairness, underpinned by the principles of natural justice where relevant, in the investigation and decision-making processes for incidents where a student is in serious contravention of a policy.

## 3. Investigation Process

When the College becomes aware of a possible serious contravention of a school policy involving students, the College's response will begin with the undertaking of an investigation. The investigation process used by the College has several stages.

### 3.1 Initial Investigation

The initial investigation involves the gathering of information only. This stage should not involve any decision-making or disciplinary action.

**3.1.1** The Head of School/Campus and/or the Director of Student Wellbeing is informed if an investigation is to be undertaken. The staff members who are most appropriate to investigate will be considered in context of the student(s) (i.e. gender, culture).

**3.1.2** Information is gathered by the relevant staff member from relevant parties, with at least one other staff member present in a support role for the student. During the information gathering process, the leading staff member should ensure the right to know the matter alleged (see **1.2.1**), the right to respond (see **1.2.2**) and the right to access support (see **1.2.3**).

**3.1.3** The safety and wellbeing of those directly and indirectly involved is to be considered. This may involve:

- making a first aid assessment (and if necessary, seeking medical support)
- conducting a risk assessment (which may involve the College Psychologists)
- safely collecting any suspected items (such as weapons or substances)
- confiscating devices (such as laptops and mobile phones)

**3.1.4** The situation is to be isolated from other students (if possible). This may involve students being suspended, removed from normal class activities, or asked to be collected by a parent or guardian while an initial investigation is undertaken.

**3.1.5** When there is reasonable suspicion that a student may be in possession of an item that is stolen or impacts the safety or wellbeing of themselves or others, then a search may be appropriate:

- The College may, without consent, conduct a search of the desk and locker of a student
- The College may, only with consent of the student, conduct a search of a student's bag, room (if boarding), and other possessions (if not on their person)
- The College will not conduct a physical search of a student's person or touch them in any way
- The College may request that a student consent to turn out their pockets or hand over any items on their person. If after making that request the College's suspicion remains, then the student's parents and the police may be contacted
- Where the College requests a student's consent to a search and consent is not provided, or a student obstructs any search, the student's parents and the police may be contacted, and the student may be subject to disciplinary action by the College
- All searches will be conducted, where reasonably practical, by at least two staff members. Any consent given to the search, the terms of such consent, and the details and results of the search are to be documented as soon as possible in writing, and countersigned by those staff members
- All searches should be conducted in the presence of the particular students to which they relate, unless that is not practicable in the circumstances.
- All searches should be conducted in a discrete way, as far as is reasonably possible, and if practical, should be conducted by staff members who are of the same gender as the student unless requested otherwise by the student.
- If in conducting any search a staff member finds any property which they suspect is stolen, or any item which may be illegal or may place in jeopardy the safety or wellbeing of any student or staff of the College, that staff member is to notify the Principal immediately. The Principal will then decide how to proceed which may include, among other courses, notifying the student's parents and the police.

### **3.2 Notification**

If it is found from the initial investigation that a serious contravention of a school policy by a student has occurred, then, prior to further investigation and interviews, the following will occur:

- 3.2.1** An incident management team will be formed consisting of relevant staff members. The team will consider the information from the initial investigation and consult the relevant policies and procedures to determine the next actions to be taken, ensuring the rule against bias (see **1.1**)
- 3.2.2** The College will consult relevant guidelines for staff in education and care settings, (for example, *Responding to Problem Sexual Behaviour in Children and Young People*)

**3.2.3** Health, community, or welfare services will be notified if required, including SAPOL in instances of contravention that is in breach of the law and/or the Department for Child Protection.

**3.2.4** Parents and guardians will be notified of:

- the findings from the initial investigation
- the specific contravention of the relevant school policy
- the College's next actions, such as the intent or need to investigate further or likely disciplinary responses
- available support for students involved

**3.2.5** The College is required to coordinate its actions with those of the police and the Department for Child Protection in instances where they need to be engaged. This is so that the stress for children or young people, families, and staff is limited as much as possible and to avoid the unintentional compromise of an investigation. The police or the Department for Child Protection must decide *who* contacts parents and caregivers, *when* this occurs, and *what* information is given to parents and caregivers.

### **3.3 Further Investigations**

It may be required that further investigations are required following the initial investigation, particularly in regard to meeting standards of proof (see **1.2.4**). Further investigations may involve the steps outlined in sections **3.1** and **3.2**.

**3.3.1** In meeting the right of representation (see **1.2.3**), the College, student or parent or guardian may request a parent or guardian be present for any further interviews with a student.

**3.3.2** A student and/or their parent or guardian may request the opportunity to respond and, if necessary, have the opportunity to obtain advice in relation to any further investigation.

## **4. College Response to Serious Contravention of a School Policy**

The serious contravention of a school policy by a student will result in a responsive action from the College. Any actions or consequences taken by the College at the conclusion of an investigation are to be recorded and communicated to all parties involved.

### **4.1 Decision-Making Process**

The decision-making process for the College's response to the serious contravention of a policy by a student will be overseen by the incident management team (see **3.2.1**) to ensure the rule against bias (see **1.1**).

- 4.1.1** The decision-making process involves:
- consideration of the information collected during investigations to ensure decisions are based on relevant evidence (see **1.2.5**) that meets a sufficient standard of proof (see **1.2.4**)
  - consultation of the contravention processes outlined in the policy that the student is in contravention of.
- 4.1.2** Decisions are made on *the balance of probabilities*. In situations where there are different versions of the truth, the College will consider the evidence and decide based on the version that is *most probably true*.
- 4.1.3** A student should not be disadvantaged by their boarding status. Contraventions of school policy by boarders should be considered with reference to the environment where it occurred. The **Student Management Processes for Boarding** should be consulted when a contravention of a boarding policy occurs.

#### **4.2 Restorative and Educative Responses**

In some cases, particularly where the impact of the contravention is considered low, the College may use restorative and/or educative responses. This involves:

- reflecting on behaviour(s) to identify impacts and alternative choices moving forward
- engaging with restorative action that repairs relationships that have been damaged

#### **4.3 Consequential Responses**

In some cases, the College may determine an appropriate consequence for the contravention in order to decrease the likelihood of a behaviour reoccurring.

Consequences imposed by the College may be:

- directly related to a behaviour and help restore damage or relationships
- service based to allow for a positive contribution to the community to be made
- punitive to allow for a clear discouragement of the behaviour

#### **4.4 Suspension and Termination of Enrolment**

In some cases, the College may decide to suspend or terminate the enrolment of the student. The **Suspension and Termination Policy** is used in these cases.

## **5. Consideration of Individual Student Needs**

### **5.1 First Nations Students**

Nominated support persons will be engaged in decision-making processes for First Nations students. This person will liaise with parents and/or guardians and/or relevant agencies where appropriate. Cultural considerations may be required in decision-making processes for First Nations students.

## 5.2 International Students

The International Student Coordinator is engaged in decision-making processes for international students. The international student coordinator will liaise with the parents and/or guardians and/or relevant agencies where appropriate. Consideration is given to decisions that may impact on visa conditions for an international student (refer to the **CRICOS Policy**)

## 5.3 Students with a Disability

Consideration is given to students when behaviour is a manifestation of a disability, such as a diagnosed social or learning need. This may require *reasonable adjustments* to be made to the expectations of behaviour or outcomes of a decision-making process.

The **Disability Standards for Education (2005)** describes a *reasonable adjustment* as one that “balances the interests of all parties affected”. In determining whether an adjustment is *reasonable*, consideration is given to the following:

- the student’s diagnosed disability
- the views of the student about whether the adjustment is reasonable
- whether there is any other adjustment that would be less disruptive and intrusive and no less beneficial for the student
- the effect of the adjustment on the student, including the effect on the student’s ability to achieve learning outcomes, participate in courses or programs, and independence
- the costs and benefits of making the adjustment
- the effect of the proposed adjustment on anyone else affected, including the education provider and other students
- whether the adjustment can be provided within a reasonable time

## 5.4 Students with Mental Health Disorders

Consideration is given to students when behaviour is a manifestation of a diagnosed or suspected (based on the advice of the College Psychologists) mental health disorder. In circumstances where this occurs, it is an expectation that external support agencies are engaged to work with the student in partnership with the College.

## 5.5 Students with Traumatic Backgrounds or Affected by Trauma

Consideration is given to students when behaviour is a manifestation of a known or suspected trauma. In circumstances where this occurs, their background may be taken into consideration, with external support agencies being engaged to work with the student in partnership with the College.

## 5.6 Students with Separated Parents

All parents and carers are entitled to be involved in and notified of any decision-making processes where possible, except where Interim Intervention Orders operate.

## 6. Right of Appeal

Students and their families have the 'right of appeal' and may use the College's grievance processes at the conclusion of the investigation and decision-making process (see **Grievance Policy – Students and Parents**). Note the process for appealing a suspension or termination of enrolment is outlined in the **Suspension and Termination Policy**.

## 7. Communication and Confidentiality

The Principal, in consultation with senior staff, determines the level of communication required in the follow up to members of our community.

**7.1** At all times there is to be due consideration regarding the confidential and private nature of the investigation and the college response. At the conclusion of any matter, it is appropriate to inform directly those members of our community who have a direct connection to the matter. This may involve staff, students, designated student cohorts and designated cohort parents. It would be unusual to inform the entire parent and student body unless the matter was impacting in a significant way upon the day-to-day running of the campus and general student wellbeing.

**7.2** If the media become involved in a student incident, the Principal, or their delegate, is the only person who has permission to speak with the media.

**7.3** For students receiving a scholarship, relevant organisations or benefactors may be informed.