



Investigation of Complaints and Due Process

Introduction

The need to investigate complaints of misbehaviour by residents in their contract with the College, however rare, requires a process that does not rely upon the Principal only as the ultimate custodian of good order. The College has recognised recently that the Principal, in taking ultimate responsibility, ought not be asked to conduct all aspects singularly from allegation, to interview, to investigation and final decision making.

Aims and Purpose

This paper applies to serious allegations of misconduct, including (but not limited to) allegations of assault, harassment and flagrant breaches of College rules and policies **where investigation may be required** in order to provide a due process in accordance with College rules and regulations for complaints. It aims to ensure a proper process in establishing an Investigation Committee once required.

General Guidelines

1. The process in relation to any complaint, or where the College decides itself to investigate a student's conduct, will be consistent with the rules of the College.
2. In cases where information about a possible serious breach of conduct has come to the attention of the College, no matter how this information comes to the attention of the College, the College may unilaterally initiate a process to investigate and resolve the matter.
3. In cases where such information comes to the attention of any member of the staff of the College, including a Residential Advisor, the staff member has a duty to report possible breaches to the Principal, Deputy Principal or Community Co-ordinator.
4. Allegations of conduct which may amount to a breach of criminal law will be reported to the police by the College upon advice and a clear view of the facts. If at any time during the procedure below a person investigating an allegation forms the view, based upon available evidence, that the misconduct might amount to a breach of the criminal law, that investigator may refer the incident to police.
5. In the case of allegations of sexual assault, such referral can only be made if it is consistent with the best interests of the complainant.
6. Notwithstanding the following, if the Principal is of the opinion that the continued presence of the person alleged to have perpetrated the misconduct represents a threat to the mental or physical safety of any other resident of the College, the Principal may require that person to leave college before the completion of the formal investigation set out below.
7. Processes that are due will be undertaken and concluded as quickly as is reasonably possible. The College accepts that it has a responsibility to ensure that

any investigation and determination process is undertaken with due process, natural justice and is fair.

8. The steps in relation to possible breaches of conduct are shown below. These steps can be used where a person wishes to complain about a possible breach of conduct, but will also be available to the College when it becomes aware of a possible breach of conduct and decides to investigate the matter itself.
9. The College will aim, at all times, to deal with complaints about possible breaches of conduct in a confidential manner; that is, to the extent that is appropriate and procedurally fair in all case and insofar as the maintenance of confidentiality does not conflict with other obligations and responsibilities of the College. This does not necessarily mean that an alleged offender or a complainant may necessarily expect to remain anonymous in a fair process. Participants in any process will be reminded about the importance of confidentiality, and will be expected to adhere to any directions they are given about maintaining and respecting it. Failure to maintain and respect confidentiality when directed to do so may itself be considered by the College to be a breach of conduct.

Complaint-based, or individual-initiated, processes

10. An individual may always seek advice from a trained Residential Advisor. Names and contact details of trained RAs are available in the College Handbook. Individuals may also make use of a broad range of community-based mechanisms, such as the Canberra Rape Crisis Centre

- a) **Step 1: Speak with a trained Advisor.**

This step is seen as advisory in itself and not mandatory and, should a complainant feel prepared to proceed immediately to complaint, then this step may be skipped.

- b) **Step 2: Decide, with advice, whether the behaviour is likely to be a breach of conduct.**

If not, then perhaps speak with speak to an advisor about other means of support. If the behaviour is likely to be a breach of conduct, then an individual can use the steps that follow to resolve the matter.

- c) **Step 3: Decide whether you wish to make a complaint.**

If you wish to make a complaint, you will be asked to put your complaint in writing. An advisor can assist you with this. The complaint must identify those you allege have offended and what you allege they have done. It should be as specific as possible. The complaint will be forwarded to the relevant Community Co-ordinator, Deputy Principal or Principal and a copy will be provided to the respondent and the first possible opportunity.

- d) **Step 4: Conciliation and its Process.**

Where possible and appropriate, all valid complaints will go through a College conciliation process. The aim of the conciliation will be to reach an understanding, reflect upon the implications for individuals in the context of close and harmonious community and to seek restoration where necessary in that context. A conciliator will be appointed to meet with each party individually to discuss and try to reach agreement regarding the complaint, possible redress and future behaviour. Details of an agreement will be communicated to the Deputy Principal who will ratify the

agreement and inform the principal. Breaches of an agreement reached via conciliation may result in additional action consistent with these procedures.

Prior to a conciliation agreement being finalised, the College will inform the parties involved if, in its opinion, there is likely to be an investigation by the College of the allegations of a breach of conduct, irrespective of the outcome of the conciliation, so that the parties may take that fact into account in their negotiations.

The outcome will be kept confidential by the Deputy Principal and Principal, save for any disclosures they deem necessary and appropriate.

- e) **Step 5: After an unsuccessful conciliation any party to the conciliation may ask for the matter to be investigated.**

The Deputy Principal, in consultation with the Principal, will decide whether a complaint will be investigated. In making this decision, the views of all those involved will be considered.

If it is decided that a complaint will be investigated, the Principal or her/his designee will constitute a Committee to investigate the matter formally.

Non complaint-based, College-initiated processes

11. Where the College receives information about a possible breach of the Code, it may decide to investigate the matter regardless of whether or not there has been a complaint.
12. The College may initiate a process that has initially been born of a complaint where conciliation has been successful or not. This may occur whether the complainant seeks an investigation or not such that it is no longer directly complaint-based but judged by the College to require its attention in the interests of all parties and the College as a whole community.
13. For all possible breaches of conduct, including serious misconduct, the manner in which the College investigates the matter will be determined by the College on a case-by-case basis but subject always to the elements of natural justice and procedural fairness.
14. Where the College is satisfied the possible breach or breaches may amount to serious misconduct, the Principal may appoint a committee to investigate the matter formally under the direction of the Deputy Principal and make suitable arrangements for the recording of all the proceedings of the investigation committee.

Investigation Committee

15. If a committee has been appointed it will present its findings about what occurred, and will make recommendations to the Principal, who will make the final decisions based on those recommendations but reserving the right to accept or not accept the recommendation in full or in part.

Investigation Committee Membership and Procedures

16. A Committee investigating allegations or complaints of misconduct shall be simply called an Investigation Committee, appointed by the Principal and normally chaired by the Deputy Principal.
17. It will be comprised of five members, including the Chair, drawn from and reflecting the breadth of the College community and its standards. It may include a professional

Member of Council, a resident representing the Burgmann Residents Association, a Residential Advisor and a further member who may be an external member invited from the broader ANU context in which the College is affiliated.

18. The Committee shall have an acceptable gender balance in its membership to the satisfaction of the Chair and the issues at hand.
19. The Committee shall be or made conversant with all aspects of natural justice and due process by the Chair in the conduct and outcomes of the investigation. In particular, the following must apply:
 - the communication in confidence of precise description of the charge or allegations to the alleged offender together with a request/requirement that they attend a hearing to investigate matter with at least 72 hours of notice to attend;
 - an invitation to the alleged offender in that communication to be accompanied by a personal witness to attend, to listen but not to speak or actively participate in the hearing unless invited for a specific purpose;
 - all the facts and evidence be heard with as much agreement to the facts and evidence be sought as far as possible;
 - the alleged offender be given the opportunity to be fully heard up to and including a final statement; and
 - the opportunity to appeal recommendations of the Investigation Committee or final decisions of the Principal be communicated before the Committee retires with advice as to how appeals may be undertaken.
20. Having considered the evidence, the Investigation Committee then agrees upon the veracity of the alleged offence, and the recommendation for decisions and actions to be taken by the Principal as communicated in a report by the Chair of the Committee.

Appeals

1. The College has an existing and recently updated Appeals and Grievance Policy and Procedures document under its Orders (12 Nov 2014) that sets out the procedures for appeals by residents who may be subject to the recommendations of an Investigation Committee and the resulting decisions of the Principal in relation to allegations of misconduct against them.
2. In any appeal, clear distinctions should be made between an appeal on the grounds of due process or lack thereof, the affordance of natural justice or lack thereof or an appeal against the nature of the decision itself and its degree of severity.
3. The right to appeal is seen as an immutable right of any resident faced with the results of alleged misconduct, an investigation and/or a decision made by the College Principal in respect of the alleged misconduct.

Dr PL Dutton

Principal