

BEACONSFIELD KINDERGARTEN INC.

STAFF COUNSELLING AND DISCIPLINE POLICY

Best Practice – Quality Area 7

PURPOSE

This policy sets out the procedures and guidelines for:

- staff counselling
- staff disciplinary procedures.

The purpose of this policy is to guide the employer in managing problems or concerns about an employee's work performance or conduct, including the employer's obligations under the Reportable Conduct Scheme.

Issues related to employee work performance or conduct will normally be addressed by the employer through a procedure that commences with discussion/counselling before proceeding to a formal and structured discipline procedure (where necessary). Open communication is encouraged between the employer and employee to ensure that matters of concern are clearly articulated and both parties have the opportunity to address matters raised in the discussion.

POLICY STATEMENT

VALUES

Beaconsfield Kindergarten Inc.:

- respects the rights of the child and values diversity
- acknowledges the vulnerability of Aboriginal children, children from a culturally and linguistically diverse background and children with a disability and has zero tolerance of discrimination
- maintains a duty of care (refer to *Definitions*) towards all children at the service
- is committed to the safety and wellbeing of all children and staff at the service
- provides a safe and secure environment for all children, families and staff at the service
- is committed to communicating openly and honestly
- encourages volunteers, students, parents/guardians and visitors to support and participate in the program and activities of the service.

The right of all parties to confidentiality must be respected. The procedures set out in this policy will be implemented within the context of rights and obligations on both employers and employees under relevant awards, industrial agreements or legislation.

SCOPE

This policy applies to the Approved Provider, Persons with Management or Control, Nominated Supervisors, Persons in day-to-day Charge, early childhood teachers, educators, staff, students on placement, volunteers, parents/guardians, children and others attending the programs and activities of Beaconsfield Kindergarten Inc.

RESPONSIBILITIES	Approved provider and persons with management or control	Nominated supervisor and persons in day-to-day charge	Early childhood teachers	Educators and all other staff	Parents/guardians	Contractors, volunteers and students
R indicates legislation requirement, and should not be deleted						
Promoting an environment that is free of any harassment, intimidation or abuse	R	√	√	√	√	√
Not treating children, parents, visitors or other employees in a manner involving any form of harassment, intimidation or any treatment that is demeaning, threatening or abusive	R	R	R	R	√	√
Acting in accordance with the requirements of the <i>Education and Care Services National Law Act 2010</i> , the <i>Education and Care Services National Regulations 2011</i> , the <i>ECA Code of Ethics</i> and the service's <i>Code of Conduct</i>	R	R	R	R		R
<p>Not engaging in unacceptable behaviour that justifies disciplinary action and may result in termination of employment, including instant dismissal, such as:</p> <ul style="list-style-type: none"> • verbal or written abuse or threats • any form of physical abuse or corporal punishment • remarks that could be seen as offensive or constitute sexual harassment • intimidatory behaviour, both verbal and written • treatment, particularly of children, that involves frightening, threatening or demeaning techniques • a serious breach of the <i>Education and Care Services National Law Act 2010</i> or the <i>Education and Care Services National Regulations 2011</i> • failing to take every reasonable precaution to protect children from any hazard likely to cause injury • failing to ensure that any child is adequately supervised • subjecting children to any form of corporal punishment • any discipline of children that is unreasonable in the circumstances • endangering the health and safety of the children • fraud and theft • attendance at work while under the influence of alcohol or non-prescription drugs 	R	R	R	R		R
In relation to the Reportable Conduct Scheme						
Notifying the Commission for Children and Young People within three business days of becoming aware of a reportable allegation (refer to <i>Definitions</i>)	R					
Investigating an allegation (subject to police clearance on criminal matters or matters involving family violence), and advising the Commission for Children and Young People who is undertaking the investigation	R					

Managing the risks to children while an investigation into a reportable allegation is being undertaken	R	√	√	√		√
Updating the Commission for Children and Young People within 30 calendar days with detailed information about the reportable allegation and any action	R					
Notifying the Commission for Children and Young People of the investigation findings and any disciplinary action taken (or the reasons no action was taken)	R					
In relation to complaints about a staff member's work performance						
Undertaking an investigation of the conduct as soon as possible, giving consideration to the relevant circumstances, including whether the complaint relates to suspected unacceptable conduct	R					
Determining when to convene the Complaints Subcommittee to conduct an investigation into suspected unacceptable conduct. At Beaconsfield Kindergarten, the committee delegates the authority to convene a Complaints Subcommittee to the president. The subcommittee should report its findings back to the executive committee	√					
As per the <i>Compliments and Complaints Policy</i> , forming a Complaints Subcommittee from the Executive Committee. Any executive committee member who has a conflict of interest in relation to the complaint will not be appointed to the subcommittee	√					
Where there are reasonable grounds to conclude that unacceptable conduct may have occurred, determine whether to suspend the employee from duty without loss of ordinary pay, pending an investigation. At Beaconsfield Kindergarten, the committee delegates to the president the authority for any decision relating to the standing down/suspension of employees with pay, pending an investigation.	√					
Conducting an investigation to assess the nature of the complaint and form a view as to the appropriate course of action. This investigation should take place prior to the executive committee authorising any action to address the matter/s in question	√					
Determining whether the issues and concerns raised can be substantiated. This includes identifying appropriate and specific examples of those issues or concerns prior to any action being taken. It may also include consideration of any written complaints	√					
Where a complaint has been received in relation to the conduct or performance of an employee, ensuring that the employee concerned is given the opportunity to respond to the contents of the complaint as part of that investigation	√					
Ensuring that the principles of natural justice are applied when managing complaints and work performance issues relating to staff, including: <ul style="list-style-type: none"> the right of an employee to know the allegation/s being made against her or him the right of each party to be heard in respect to the allegations the right of each party to be treated fairly the right of the employee to have a support person present during interviews 	√	√	√	√		√

<ul style="list-style-type: none"> the right of each party to a decision maker who acts fairly and in good faith 						
Ensuring that the Complaints Subcommittee provides a report to the full executive committee at the conclusion of its investigation	√					
Ensuring that no action in relation to complaints or work performance of an employee occurs without the prior approval of the executive committee	√					
Ensuring that all information regarding the investigation of a complaint remains confidential	√					
Determining what penalty should be given to an employee who is found to have engaged in unacceptable conduct	√					
Participating in any discipline or counselling procedures as directed by the employer	√	√	√	√		√

PROCEDURES

CONFLICT OF INTEREST

Any persons, including committee members or the Centre Manager, who may have lodged a complaint or be personally involved in the matter should refrain from involvement in the discussion or decision-making processes relating to the complaint or performance issues, or participating in the subcommittee investigating the issues. This does not apply to a person who, as the employer's representative, has observed poor performance or misconduct and brought it to the attention of the rest of the committee.

EXECUTIVE COMMITTEE APPROVAL

No action in relation to complaints or work performance of an employee will occur without the prior approval of the executive committee. All decisions relating to complaints or performance of staff will be made by the executive committee, and all committee members will respect the confidentiality of the information discussed.

WORK PERFORMANCE COUNSELLING PROCEDURE

Purpose of counselling

This counselling procedure will not apply in situations where there is conduct by the employee that has been substantiated by an investigation and justifies immediate disciplinary action or termination of employment.

The counselling procedure is intended as a positive exercise to facilitate communication between the parties and to assist (where applicable) the employee to address matters related to their work performance or conduct, and for the employer to identify concerns raised and to articulate required conduct/work performance levels. It provides an opportunity for the employer to discuss, and attempt to resolve, problems or concerns relating to an employee's work performance/conduct, without needing to issue a formal written warning.

In the event that issues relating to an employee's work performance or conduct are not resolved, the matters would be dealt with under the formal discipline procedure.

Counselling procedure

The employee must be notified in writing of the date, time and venue of the counselling meeting and the nature of issues to be discussed/complaints made. The employee may request the attendance of a union representative or other support person at the meeting.

The employer should meet with the employee to discuss the identified areas of concern related to the employee's work performance or conduct. Discussions should identify what changes or outcomes are required to address the concerns raised by the employer. During the counselling meeting, both the

employer and employee should listen to, and carefully consider, the views, reasoning and explanations provided by the other party.

The general content of the counselling meeting, and any specific outcomes and the timelines for these to be achieved, should be recorded in writing, a copy of which will be kept by the employer and a copy will be given to the employee.

WORK DISCIPLINE PROCEDURE

Purpose of the discipline procedure

The discipline procedure is intended to address areas of concern related to the employee's conduct through a formal structured process within reasonable timelines, using strategies for conflict resolution and a process of evaluation/review. It is not appropriate to use a discipline process for performance matters where the employee is making genuine attempts to improve the performance in question.

Following completion of the formal investigation and where the allegations/complaints are substantiated, the employee may be given a warning, issued in writing as well as verbally, in relation to the conduct. It is important for employees to understand that the discipline procedure normally consists of two warnings and, if necessary, will end in termination of employment where the conduct of an employee fails to meet the required standard within appropriate timelines.

Conduct that falls within the scope of serious unacceptable behaviour that justifies disciplinary action may also result in termination of employment.

Discipline procedure

The employee will be notified in writing of the date of the disciplinary meeting and the issues of concern. The employee may request the attendance of a union representative or other support person at the meeting.

During the disciplinary meeting, both the employer and employee should listen to and carefully consider the views, reasoning and explanations provided by the other party. The employee will be given an opportunity to respond to the matters raised before the employer makes any final decision. The general content of the disciplinary meeting, and any specific outcomes, will be recorded in writing by the employer and a copy given to the employee.

The executive committee will meet as soon as possible after the investigation has been completed and, based on the report received from the subcommittee, will decide on action to be taken and refer this back to the subcommittee for implementation.

The employer will respect the right of the employee to request in writing a review of the decision to issue a warning in light of any additional information provided by the employee. Records of disciplinary procedures and the issuing of warnings will be kept on the employee's personnel file for a period of twelve months, after which, if there are no further warnings, they will be removed from the employee's personnel file.

The employer will abide by any obligations relating to disciplinary procedures, including maintaining employee entitlements contained in any relevant industrial agreement to which the employer is a respondent party.

GUIDELINES FOR MEETING WITH EMPLOYEES

The following are guidelines for meetings held with employees as part of this policy.

Convening a meeting with employees

The procedures in this policy may necessitate meetings between a subcommittee (or committee member appointed by the executive committee) and employees to discuss and address issues of concern. The following are guidelines for the conduct of these meetings.

During the meeting with employees

- Employees may request the attendance of a union representative or support person.

- The subcommittee will define the work performance issues or conduct that are of concern, and refer as appropriate to the employee's position description.
- The subcommittee will provide details to the employee of specific instances in which there has been a failure to comply with requirements relating to work performance or conduct.
- The employee will be given an opportunity to comment on and explain their own view of the work performance issues or conduct.
- The subcommittee will outline the outcomes the committee requires in relation to the particular work performance issues or conduct. Note that the meeting may be adjourned for the subcommittee to refer to the executive committee for guidance about the required outcomes.

Outcomes

- Employees may request the attendance of a union representative or support person at any subsequent meeting.
- The subcommittee will clearly identify and inform the employee of necessary requirements and/or changes so that the employee can address issues related to work performance or conduct.
- The subcommittee will consider any requests made by the employee for appropriate and affordable training or support that could be of assistance to the employee.
- Where appropriate, a monitoring period and date will be set to review performance/conduct.

Record of meetings

Where appropriate, the content and any specific outcomes or requirements identified during the meeting with the employee will be recorded in writing by the subcommittee and a copy given to the employee. In situations where interviews or meetings are conducted with employees as part of the discipline procedure, an appropriate written record of the meeting will be prepared by the subcommittee and a copy given to the employee.

BACKGROUND AND LEGISLATION

In implementing this policy, the employer will act in accordance with the requirements specified under relevant awards, industrial agreements or legislation, and in a fair and equitable manner.

Legislation and standards

Relevant legislation and standards include but are not limited to:

- *Child Wellbeing and Safety Act 2005*
- Early Childhood Australia, *Code of Ethics*: www.earlychildhoodaustralia.org.au
- *Fair Work Act 2009* (Cth)
- *Occupational Health and Safety Act 2004* (Vic)
- Victorian Institute of Teaching – The Victorian Teaching Profession Code of Conduct and Code of Ethics: <http://www.vit.vic.edu.au>

DEFINITIONS

The terms defined in this section relate specifically to this policy. For commonly used terms e.g. Approved Provider, Nominated Supervisor, Regulatory Authority etc. refer to the General Definitions section of this manual.

Child abuse: (in the context of this policy) refers to an act or omission by an adult that endangers or impairs a child's physical and/or emotional health or development. Child abuse can be a single incident but often takes place over time. Abuse, neglect and maltreatment are generic terms used to describe situations in which a child may need protection. Child abuse includes any and all of the following:

- *Bullying:* Repeated verbal, physical, social or psychological behaviour that is harmful and involves the misuse of power by an individual or group towards one or more persons. Bullying occurs when

one or more people deliberately and repeatedly upset or hurt another person, damage their property, reputation or social acceptance.

- *Emotional and psychological abuse*: When a child's parent or caregiver repeatedly rejects the child or uses threats to frighten the child. This may involve name calling, put downs or continual coldness from the parent or caregiver to the extent that it significantly damages the child's physical, social, intellectual or emotional development.
- *Grooming*: Grooming can involve the use of a variety of manipulative and controlling techniques used to build trust or normalise sexually harmful behaviour with the overall aim of facilitating exploitation or preventing disclosure (or both).
- *Family violence*: When children and young people witness or experience the chronic, repeated domination, coercion, intimidation and victimisation of one person by another through physical, sexual and/or emotional means within intimate relationships. Contrary to popular belief, witnessing episodes of violence between people they love can affect young children as much as if they were the victims of the violence. Children who witness regular acts of violence may have greater emotional and behavioural problems than other children.
- *Neglect*: The failure to provide a child with the basic necessities of life, such as food, clothing, shelter, medical attention or supervision, to the extent that the child's health and development is, or is likely to be, significantly harmed.
- *Physical abuse*: When a child suffers or is likely to suffer significant harm from an injury inflicted by a parent/guardian, caregiver or other adult. The injury may be inflicted intentionally or be the consequence of physical punishment or the physically aggressive treatment of a child. Physical injury and significant harm to a child can also result from neglect by a parent/guardian, caregiver or other adult. The injury may take the form of bruises, cuts, burns or fractures, poisoning, internal injuries, shaking injuries or strangulation.
- *Sexual abuse*: When a person uses power or authority over a child, or inducements such as money or special attention, to involve the child in sexual activity. It includes a wide range of sexual behaviour from inappropriate touching/fondling of a child or exposing a child to pornography, to having sex with a child and grooming with the intent of committing child sexual abuse.
- *Racial, cultural, religious abuse*: Conduct that demonstrates contempt, ridicule, hatred or negativity towards a child because of their race, culture or religion. It may be overt, such as direct racial vilification or discrimination, or covert, such as demonstrating a lack of cultural respect (attitude and values) and awareness (knowledge and understanding) or failing to provide positive images about another culture.

Counselling procedure: A method of dealing with the work performance of an employee, or a complaint relating to an employee, through discussion between the employer and employee without recourse to formal disciplinary procedures.

Discipline procedure: A formal procedure normally consisting of one or more written warnings which can, if warranted, result in termination of employment.

Employer: For the purpose of this policy, a legally constituted committee or employing body.

Reportable allegation: any allegation that an employee, volunteer or student has committed child abuse (refer to *Definitions*).

Reportable conduct: as listed in the *Child Wellbeing and Safety Act 2005*:

- sexual offences committed against, with or in the presence of a child
- sexual misconduct committed against, with or in the presence of a child
- physical violence against, with or in the presence of a child
- any behaviour that causes significant emotional or psychological harm to a child
- significant neglect of a child.

Unacceptable conduct: Behaviour of an employee that justifies the implementation of immediate disciplinary processes, which may lead to termination of employment, including termination without notice or pay in lieu of notice.

Warning: A formal discipline procedure issued both verbally and in writing.

SOURCES AND RELATED POLICIES

Sources

- Commission for Children and Young People website
- ELAA Early Childhood Management Manual

Service policies

- *Child Safe Environment Policy*
 - *Compliments and Complaints Policy*
 - *Delivery and Collection of Children Policy*
 - *Interactions with Children Policy*
 - *Occupational Health and Safety Policy*
 - *Privacy and Confidentiality Policy*
 - *Relaxation and Sleep Policy*
 - *Staff Grievance Policy*
 - *Staff Health and Wellbeing Policy*
 - *Staffing Policy*
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EVALUATION

In order to assess whether the values and purposes of the policy have been achieved, the Approved Provider will:

- regularly seek feedback from everyone affected by the policy regarding its effectiveness
- monitor the implementation, compliance, complaints and incidents in relation to this policy
- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of the service's policy review cycle, or as required
- notify all stakeholder at least 14 days before making any significant changes to this policy or its procedures unless a lesser period is necessary because of a risk (*Regulation 172 (2)*).

ATTACHMENTS

Nil

AUTHORISATION

This policy was adopted by the Approved Provider of Beaconsfield Kindergarten Inc. on 18th March 2019.

REVIEW DATE: 19/08/2024

REVIEW FREQUENCY: Two-yearly

NEXT REVIEW DUE: August 2026