

Policy created: 2021 **Reviewed:** 2022.

Monitoring, evaluation and reviews: occurs annually, overseen by the principal.

Whistleblower Policy

Schools which are bodies corporate (companies limited by guarantee, incorporated associations or body corporates under any law) are required to observe the provisions of the Corporations Act which relate to whistleblowing.

Background:

This policy demonstrates how we protect eligible whistleblowers and manage qualifying disclosures made regarding misconduct in relation to the school.

This policy applies to all persons who interact with the School (including its Staff, Students, Parents, eligible Whistleblowers, and any other Members of the School community involved in School activities), who disclose wrongdoing in relation to the School, to ensure such persons can do so safely, securely and with confidence that they will be protected and supported.

This policy will be published on our website and be made available to Board members and employees. Procedural fairness must be observed in all aspects of the grievance handling process.

Legislative requirements

Our policy is consistent with, and refers to, legislative requirements for dealing with complaints under both Education and Care Services National Law and Education Act (1990) (NSW). Education and Care Services National Law Act 2010. Education and Care Services National Regulations 2011 (ACECQA). NSW Education Standards Authority (NESA). Registered and Accredited Individual Non-government Schools (NSW) Manual. 3.6 – Safe and Supportive Environment.

DISCLOSURE

A. Qualifying Disclosure

A qualifying disclosure is when an eligible whistleblower makes a disclosure to an eligible recipient, and the eligible whistleblower has reasonable grounds to suspect that the information concerns a disclosable matter.

B. Who can make a qualifying disclosure?

An **eligible whistleblower** is an individual who is or has been any of the following, in relation to the school:

- a Board member

- an employee
- a person who supplies goods or services (paid or unpaid)
- an employee of a person who supplies goods or services (paid or unpaid)
- an individual who is an associate of the school (defined in Corporations Act)
- a relative or dependent (or dependents of a spouse) of any individual described above.

Anonymous disclosures

A disclosure can be made anonymously. However, this may make it difficult to investigate the reported matter. The school encourages disclosers to provide their names. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated and the school encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

C. Disclosable matters that qualify for protection

A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to the school or a related company concerns:

- misconduct
- an improper state of affairs or circumstances
- illegal activity (including conduct of officers and employees) – meaning activity in breach of the Corporations Act or specified financial services legislation, or an offence against any law of the Commonwealth
- conduct (including conduct of officers and employees) that represents a danger to the public or financial system.

This may include any conduct in relation to the operation of the school that involves:

- fraudulent activity
- unlawful or corrupt use of school funds
- improper accounting or financial reporting practices
- systemic practices that pose a serious risk to the health and safety of any person on school premises or during school activities.

Reasonable grounds to suspect

A discloser would have 'reasonable grounds to suspect' if the discloser has a suspicion that could reasonably be formed based on the facts and information available to them.

If a disclosure is made without 'reasonable grounds to suspect' (e.g., where the disclosure is unfounded), the disclosure will not be a qualifying disclosure and the discloser will not have the protections provided for under this policy and the Corporations Act.

Other Policies

This policy should not be used to:

- replace the grievance procedure that should be used to raise personal issues relating to employment, the work environment,
- work relationships and decisions made by other Staff members which impact on a person's work which is covered by the School's Complaints and Grievances Policy and Procedure documentation;
- replace the process that should be used to raise allegations of Staff misconduct that does not meet the criteria of a whistleblowing disclosure which is covered by the School's Staff Code of Conduct and Complaint Investigation Process documentation;
- replace the mandatory reporting of reportable conduct in relation to Child Protection which is covered by the School's Child Protection Policy and Procedure documentation;
- question financial or business decisions taken by the School;
- reconsider any matters which have previously been addressed under unlawful discrimination, harassment, grievance, disciplinary or bullying complaints in accordance with other relevant School policies and procedures.

D. Who can receive a qualifying disclosure?

An **eligible recipient** is an individual who occupies any of the following roles, in relation to the school or a related company:

- Board Director, Principal/Delegate, Business Manager or Registrar
- an auditor, or member of an audit team of the school or a related company
- an actuary of the school or a related company.

Making a qualifying disclosure

While an eligible whistleblower can make a disclosure to any eligible recipient, the school encourages them to make a disclosure in writing to the Principal, via email principal@montessori.nsw.edu.au

If it is not appropriate for the disclosure to be made to the Principal, the eligible whistleblower is encouraged to make the disclosure, in writing, to the Board Chairperson. Where a disclosure is made to an eligible recipient who is not the principal, then subject to the confidentiality protections set out at Section F below, it will generally be passed onto the principal and dealt with in accordance with Section E below.

External disclosures

Disclosures may also qualify for protection if they are made to ASIC, APRA or a prescribed Commonwealth authority, or if an eligible whistleblower makes a disclosure to a legal practitioner to obtain advice about the operation of the whistleblower provisions.

Public Interest disclosures

An eligible whistleblower can disclose to a member of Parliament or a journalist only if the information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and:

- 90 days has passed since the time of the first disclosure
- the eligible whistleblower does not have reasonable grounds to believe action is being, or has been, taken to address the information in the disclosure

- the eligible whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest
- the eligible whistleblower informs the original recipient they intend to make a public interest disclosure
- the extent of information disclosed is no greater than necessary to inform the recipient of the disclosable matter.

Emergency disclosures

An eligible whistleblower can disclose to a member of Parliament or a journalist only if the information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and:

- the eligible whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment
- the eligible whistleblower informs the original recipient they intend to make an emergency disclosure
- the disclosure of information is no greater than necessary to inform the recipient of the substantial and imminent danger.

Eligible whistleblowers who make a 'public interest disclosure' or an 'emergency disclosure' also qualify for protection.

E. Investigating a qualifying disclosure

Receiving a disclosure

Upon receiving a disclosure, the recipient, generally the principal or Board Chairperson, will assess the disclosure to determine whether it qualifies for protection under the *Corporations Act* and is to be managed in accordance with this policy (qualifying disclosure) or the disclosure concerns matters that should be managed in accordance with related policies.

Investigating a qualifying disclosure

How the school investigates a qualifying disclosure will depend on the nature of the disclosure. An investigation will generally involve the making of inquiries or collection of evidence for the purpose of assessing the disclosure made by the whistleblower.

External professionals may be engaged to assist or conduct the investigation process.

In instances where the school reports the allegations within the disclosure to a third party, such as NSW Police, Australian Federal Police or Australian Securities and Investments Commission (ASIC), the investigation procedures of the relevant third party will generally take precedence.

The timing of an investigation will depend on the circumstances of the matter and whether the school is the primary investigator of the disclosure.

Employees about whom disclosures are made will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.

An eligible whistleblower and the relevant parties that the disclosure is about may choose to have an appropriate support person present at any meeting with representatives of the school.

F. Confidentiality and records

Under the Corporations Act, the identity of the discloser of a qualifying disclosure and information which is likely to lead to the identification of the discloser must be kept confidential.

Exceptions to this are disclosures to ASIC, the Australian Federal Police, a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections or made with the consent of the discloser.

The discloser's identity and information which is likely to lead to the identification of the discloser can also be provided to any Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties. This could include NSW Police, the NSW Ombudsman, NSW Education Standards Authority or the NSW Department of Education.

It is also permissible to disclose information which could lead to the identification of the discloser if the disclosure is reasonably necessary for the purpose of investigating the matter, if all reasonable steps are taken to reduce the risk that the discloser will be identified as a result of the information being disclosed.

Breach of these confidentiality protections regarding the discloser's identity and information likely to lead to the identification of the discloser is a criminal offence and may be the subject of criminal, civil and disciplinary proceedings.

Confidentiality must be observed in relation to handling and storing records.

G. Whistleblower protections

Eligible whistleblowers making a qualifying disclosure are protected by the requirement that their identity, and information that may lead to their identification, should be kept confidential, subject to relevant exceptions as set out in section F.

Eligible whistleblowers making a qualifying disclosure cannot be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. No contractual or other remedy or right may be enforced or exercised against the person on the basis of the disclosure.

Whistleblowers who make some types of qualifying disclosures (generally external to school) are also provided immunities to ensure that information they disclose is not admissible in evidence against them in criminal proceedings or in proceedings for imposition of a penalty, other than proceedings in respect of the falsity of information.

These immunities do not prevent an eligible whistleblower being subject to criminal, civil or other liability for conduct that is revealed by the whistleblower, only that the information person has disclosed is not admissible in certain proceedings against them.

Eligible whistleblowers are also protected from victimisation - suffering any detriment by reason of the qualifying disclosure. It is unlawful for a person to engage in conduct against another person that

causes, or will cause detriment, where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure.

Threats of detriment are also unlawful.

Detriment has a very broad meaning and includes dismissal of an employee, injuring an employee in their employment, alteration of an employee's position or duties to their disadvantage; discrimination between an employee and other employees; victimisation of a dependent of the discloser, harassment or intimidation of a person or harm or injury to a person, including psychological harassment; damage to a person's property, reputation or business or financial position.

Remedies for being subjected to detriment could include:

- Compensation
- injunctions and apologies
- reinstatement of a person whose employment is terminated
- exemplary damages

Schools and individuals may face significant civil and criminal penalties for failing to comply with confidentiality and detrimental conduct provisions.

If an eligible whistleblower believes they are being subjected to a detriment or a threat of detriment, this should immediately be reported in writing to the principal, via email.

If it is not appropriate for the report to be made to the principal, the eligible whistleblower should report the matter, in writing, to the Board Chairperson via email.

H. Additional support for eligible whistleblowers and other employees

The school's employee assistance program (EAP) services will be available to all eligible whistleblowers and other employees affected by the disclosure, should they require that support.

I. Contact

If you have any queries about this policy, you should contact the Principal (principal@montessori.nsw.edu.au) or Board Chairperson for advice (chair@montessori.nsw.edu.au).

Related Policies and Procedures

Related policies and procedures include:

- Child Protection Policy and Procedures
- Unlawful Discrimination, Harassment & Bullying
- Complaints Policy and Procedures