## **Guidelines for implementing “Allegations against employees in the area of student protection”**

## Purpose

The Department of Education is committed to ensure the safety, welfare and wellbeing of all students and is therefore committed to respond to allegations of student harm resulting from the conduct or actions of employees.

This commitment includes the provision of a safe and supportive learning environment for all students and requires all employees to model and encourage behaviour that upholds the dignity and protection of students from harm.

## Context

This guideline reflects the legislative requirements and protocols of the department to respond to student harm allegations made against employees in relation to the management and reporting of harm **only** in instances where it has been alleged that an employee has caused harm to a student.

This guideline should be read in conjunction with the [Allegations against employees in the area of student protection procedure](https://ppr.mpe.qed.qld.gov.au/pp/allegations-against-employees-in-the-area-of-student-protection-procedure).

## Employee harm to students

### Identifying types of harm

Three broad categories of employee conduct have been identified as having the potential to cause student harm. These are:

1. Physical harm by way of contact, intervention or restraint (directly or indirectly)
2. Psychological harm by way of inappropriate verbal or unauthorised communication
3. Sexualised harm by way of sexual abuse, including grooming

The following explanations are detailed to inform and provide guidance to principals/managers/supervisors in the identification of possible harm and in determining what response might be required if a complaint or allegation is received.

1. **Physical harm by way of contact, intervention or restraint (directly or indirectly)**

There are circumstances when it is appropriate for employees to touch or make contact with students. It can be a normal, caring gesture to make physical contact with students when offering praise, encouragement, guidance or comfort. If a reasonable person would consider that the emotional needs of the student (e.g. to be comforted, reassured or encouraged) are met, then this type of contact could be considered acceptable.

In other instances physical contact may occur between an employee and a student that could be initially considered and later determined as punitive or otherwise for the purpose of re-direction of the student or to protect the student from impending harm to the student, employee or others.

In such instances the appropriate student protection referral should be made to the Intake and Assessment team for assessment and a decision made as to an appropriate intervention as necessary. Referrers should choose either an SP1 or SP2 type referral for this type of harm category. The selection of an SP1 or SP2 referral is dependant on the severity, and circumstances of the alleged incident and other localised knowledge available to the referrer. The Intake and Assessment team may alter the matter type upon assessment of all available information.

It is also important that employees actively discourage students from initiating physical contact with them; however judgments about contexts, familiarity, regularity, and age of students will need to be made.

Reasonable physical intervention/restraint is an option when:

* a student threatens or engages in acts of violence towards another student, students or employees
* a student threatens to or engages in harm to themself

The use of physical restraint should always be consistent with department’s [Restrictive practices procedure.](https://ppr.mpe.qed.qld.gov.au/pp/restrictive-practices-procedure)

**Action required**

The departmental response to an allegation of physical contact between a student and an employee will vary, depending upon the circumstances of the particular incident.

If there is no physical injury or minor scratches and minor bruising to the student and the employee has no known adverse history or pattern of behaviour, this incident may be dealt with via localised fact finding culminating in informal resolution being facilitated between the parties. An incident report including the proposed findings and outcomes must be reported to the Intake and Assessment team for final assessment and review on the SP1: Report of student harm (suitable for local resolution) using iRefer or form (SP1 referral).

In all other circumstances, incidents involving more serious physical contact and/or a pattern of known conduct by an employee must be referred to the Intake and Assessment team for formal assessment on the SP2: Report of significant harm to a student as a result of actions by an employee using iRefer or form (SP2 referral).

1. **Psychological harm by way of inappropriate verbal or unauthorised communication**

When employees communicate with students it should be respectful and appropriate for the situation. It should not contain sexual references or innuendo, nor should it involve threats of punishment or physical action against students. Employees of a state educational institution will occasionally need to raise their voices to restore order to a disruptive group or individual student. This type of interaction should be occasional, should incorporate an appropriate response and should not be demeaning, intimidating, insulting or overbearing.

There may be times where an employee may have contact with a student out of hours for family reasons or other genuine reasons concerning out of school activities connected to a state education institution education program or external independent sporting club or event. In such circumstances employees should be cognisant of maintaining professional boundaries and take steps to avoid abusing or taking advantage of the position of power and trust they hold over students. Where a complaint is received about such contact, an employee may be asked to provide details of the circumstances of such contact which also may include the employee having to sight a legitimate and endorsed education reason or focus or some prior parental approval and departmental acknowledgement of such contact occuring. The department’s [Standard of Practice](https://qed.qld.gov.au/workingwithus/induction/workingforthedepartment/inductionandonboarding/Documents/code-of-conduct-standard-of-practice.pdf) provides further detail concerning contacting and conversing with students via electronic devices and other social media forums.

**Action required**

If an instance of inappropriate verbal behaviour occurs that is considered excessive, disrespectful and/or inappropriate, and the employee has no known adverse history or pattern of behaviour, this incident may be dealt with via localised fact finding culminating in informal resolution being facilitated between the parties. An incident report including the proposed findings and outcomes must be reported to the Intake and Assessment team for final assessment and review on the [SP1: Report of student harm (suitable for local resolution)](https://ppr.mpe.qed.qld.gov.au/attachment/student-protection-forms-allegations-against-employees-in-the-area-of-student-protection.docx) using iRefer or form (SP1 referral)

In all other circumstances, including incidents involving more serious or suspected psychological harm by way of verbal contact, face to face contact or via an electronic medium, a student harm referral is required to be forwarded to the Intake and Assessment team for formal assessment. This may include isolated instances of discussion or presentation of inappropriate material or adult themes being discussed or the telling of sexualised or racist jokes and/or a pattern of known conduct by an employee. See [SP2: Report of significant harm to a student as a result of actions by an employee](https://ppr.mpe.qed.qld.gov.au/attachment/student-protection-forms-allegations-against-employees-in-the-area-of-student-protection.docx) using iRefer or form (SP2 referral).

1. **Sexualised harm by way of sexual abuse, including grooming**

For the purpose of the department’s student protection procedure, the definition of sexual abuse is detailed under s.365 and s.365A of the *Education (General Provisions) Act 2006* (Qld). It states, **sexual abuse**, in relation to a relevant person, includes sexual behaviour involving the relevant person and another person in the following circumstances—

(a) the other person bribes, coerces, exploits, threatens or is violent toward the relevant person;

(b) the relevant person has less power than the other person;

(c) there is a significant disparity between the relevant person and the other person in intellectual capacity or maturity.

A ‘relevant person’ is defined as:

(a) a student under 18 years attending the school;

(b) a pre-preparatory age child registered in a pre-preparatory learning program at the school;

(c) a person with a disability who—

(i) under section 420(2), is being provided with special education at the school; and

(ii) is not enrolled in the preparatory year at the school.

Section 229BB *Failure to protect child from child sexual offence* of the *Criminal Code Act 1899* (the Criminal Code) makes it an offence to fail to take steps to protect children from sexual offenders, within an institutional setting. The offence will require a person in a position of power or responsibility (i.e. departmental employee, volunteer or contractor) to reduce or remove a known risk of offending against a child by an adult associated with an institution (i.e. departmental employee, volunteer or contractor).

Section 229BC *Failure to report belief of child sexual offence committed in relation to child* of the Criminal Code makes it an offence for any adult not to report sexual offending against a child by another adult to police.

For the purpose of this procedure; grooming, sexual misconductand/or sexual harassment may also include behaviours which amount to sexual abuse.

Employees need to be mindful that a student may attempt to initiate sexual contact. Any flirtatious comments or sexual contact by students directed at an employee requires an immediate response to neutralise the incident. Employees should discuss such matters with their principal or manager. The student should be advised the conduct is highly inappropriate.

**Action required**

All employees have an obligation to report behaviours and/or conduct of any employee if they suspect that the employee has sexually abused, committed a child sexual offence against, or attempted to establish a sexual relationship with a student at the educational institution. This will include situations where an employee reasonable suspects that a student is likely to be sexually abused.

Any sexualised conduct between an employee and a student under the age of 18 years is reportable, irrespective of whether this contact was consensual.

There are no provisions for fact finding in these types of matters. All cases of likely or actual sexual abuse must be referred to the Queensland Police Service and the Intake and Assessment team using an SP3 notification.

In the event of a situation where an employee forms a reasonable suspicion that a student under the age of 18 years has been sexually abused or is likely to be sexually abused by an employee, the employee is required to make a written report to the principal or the principal’s supervisor in the case where the principal is the person under suspicion for the alleged abuse. The principal or the principal’s supervisor must immediately report the matter to the Queensland Police Service in writing and provide a copy of such report to the Intake and Assessment team.

The Queensland Police Service is to be notified using an [SP3: Report of suspected sexual abuse of a student by an employee](https://ppr.mpe.qed.qld.gov.au/attachment/student-protection-forms-allegations-against-employees-in-the-area-of-student-protection.docx) using iRefer or form (SP3 form). When an SP3 matter is sent to the Queensland Police Service using the iRefer electronic lodgement service, a copy is automatically sent to the Intake and Assessment team for action as necessary.

Where an allegation of sexual abuse of a child is against a non-school-based employee and/or a school location is not known, refer directly to Queensland Police Service and the Intake and Assessment team any matter of student harm defined as sexual abuse (definition) using the electronic lodgement service iRefer by selecting SP3: Report of suspected sexual abuse of a child by an employee, without unreasonable delay. The referrer is not to inform the employee who is the subject of the allegation, unless otherwise directed or approved by the Intake and Assessment team.

For all other instances where an adult gains information that causes them to suspect that a child sexual offence has been or is being committed by another adult against a child, report directly to the Queensland Police Service by calling Policelink on 131 444 without unreasonable delay.

### Reporting or receiving the information or allegation

Employees that have concerns about interactions between an employee and a student should report the behaviour to the relevant principal/manager/supervisor or regional/institute/statutory authority director as soon as possible. Employees may also contact the [Intake and Assessment team](https://intranet.qed.qld.gov.au/Services/strategymanagement/integrity-employee-relations/Pages/Howtomakeacomplaint.aspx) (departmental employees only) for advice. If after receiving advice an employee determines a reasonable suspicion of harm to a student by an employee exists, they must immediately provide a verbal or written report to their principal/manager/supervisor regarding the matter. If the suspicion involves the principal or manager, the report must be provided to the relevant regional/institute/statutory authority director, who will immediately provide a copy to the Intake and Assessment team and the Queensland Police Service in the case of a sexual abuse matter.

If a student makes a complaint or reports directly to an employee, the employee should listen attentively in a non-judgemental manner and record the student’s exact words as best as possible. If clarification is required, leading questions should not be used. The employee should exercise care not to pre-judge the information provided and should respond with student safety foremost in their minds.

Employees must maintain confidentiality; however an employee has an obligation to report information or allegations disclosed to them under the [*Crime and Corruption Act 2001* (Qld)](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2001-069) (s.38 and s.39). Under this *Act* an employee, as a public official, who suspects that a complaint or information being disclosed may constitute official misconduct, has a duty to notify the department irrespective of any other obligation the employee has to maintain confidentiality about a matter to which the complaint or information relates.

### Record keeping

It is recommended that employees of the department maintain diary notes, or record in OneSchool for school-based employees, outlining any signs of harm and all other relevant information. The diary notes should contain factual information about observable events, rather than opinion, and should include the dates and times of observations, and the exact wording of any relevant statements spontaneously made by a student.

### Support and protection for employees

Reporting suspected harm caused by an employee can be very difficult, particularly in small communities. The department recognises these difficulties and will provide all reasonable support to an employee who experiences any difficulty meeting their obligation to report suspected harm of a student by an employee. Furthermore, if a report by an employee is assessed as meeting thresholds as defined within the *Public Interest Disclosure Act 2010* (Qld) the employee may be identified as making a [public interest disclosure (PID)](https://ppr.mpe.qed.qld.gov.au/pp/making-and-managing-a-public-interest-disclosure-procedure) and be afforded protections under the *Act*.

While the aim of this guideline in conjunction with the [Allegations against employees in the area of student protection procedure](https://ppr.mpe.qed.qld.gov.au/pp/allegations-against-employees-in-the-area-of-student-protection-procedure) is to safeguard students, the department is aware that employees who are the subject of allegations involving student harm are under considerable strain. This situation can be even more testing in small communities, particularly if the allegations are broadly known.

In certain circumstances, especially if the allegations are of a serious nature, an employee may be moved to an alternative state educational institution until the investigation is complete. It is acknowledged that this option may cause disruption and inconvenience, however, the department’s commitment to student safety is paramount and for that reason this is an appropriate course of action. Employees that are the subject of allegations relating to student harm have access to confidential counselling assistance from the department’s employee assistance advisors.

If allegations are found to be without substance, the affected employee will normally return to their substantive position, unless exceptional circumstances exist. Where allegations are substantiated, the employee may be subject to public service disciplinary processes.

### Support for students

Reporting suspected harm is only part of the student protection process. The department has a responsibility to offer a long-term, supportive learning environment. Students who may need protection can be supported by:

* treating them with respect and dignity
* being sensitive to their needs, feelings and concerns
* monitoring their situation, and
* advising other employees who have contact with them of the special circumstances, without revealing more background information.

Additional student support and assistance can be obtained from guidance officers, counsellors, and in some cases school-based nurses. In some circumstances, consultation with a support person from another agency can help an employee to provide a supportive learning environment for the student.

### Confidentiality

As employees we may have access to certain information which must be treated as confidential, especially where it concerns allegations of suspected harm to a student. The [Code of Conduct](https://www.forgov.qld.gov.au/code-conduct-queensland-public-service) and the department’s [Standard of Practice](https://qed.qld.gov.au/workingwithus/induction/workingforthedepartment/inductionandonboarding/Documents/code-of-conduct-standard-of-practice.pdf) require employees to maintain confidentiality at all stages of an investigation. Failure to adhere to these principles could result in the matter being referred to the Intake and Assessment team resulting in a breach of the department’s disciplinary standards.

### Examples of appropriate and inappropriate actions or responses

The following examples are typical of the types of conduct that would constitute harm to a student, and conduct that would not constitute harm. These examples are provided to assist employees and management to maintain appropriate professional standards in their relationships with students and to properly respond to instances of suspected student harm by an employee.

### Physical intervention/restraint

**Example 1: Appropriate touching**

A six year old student falls over in the playground, skins his knees and starts to cry. A janitor working nearby picks him up and comforts him until he stops crying. He then puts the boy back on the ground and walks with him, holding his hand, to a first-aid station.

**Example 2: Appropriate touching**

To instruct a student in the proper use of an implement, an employee places her hands over a student’s hand while the student is using a mallet and chisel. The contact ceases after the demonstration is completed.

**Example 3: Inappropriate touching**

An employee walks around the playground with one arm around the waist of a secondary school student. In all such circumstances, this type of prolonged contact is inappropriate.

**Example 4: Inappropriate touching**

An employee strokes the hair of a 14 year old female student, remarking what pretty hair she has.

**Example 5: Inappropriate touching**

An employee at an athletics meeting moves to congratulate a student who has successfully completed an event. While walking alongside the student, the employee places their arm around the student’s back area, at the same time pulling the student towards them to make body contact.

**Example 6: Inappropriate physical intervention/restraint**

A fourteen year old student is threatening others with a ruler and has ignored repeated directions to desist. The employee holds the student’s arm to try and remove the ruler from the student’s grasp. The student drops the ruler and calms down but the employee continues to grip the student’s arm without a good reason. This is considered unreasonable and inappropriate and should be dealt with as a minor incident.

**Example 7: Inappropriate physical intervention/restraint**

A student is standing up displaying disruptive, but non-violent behaviour, defiant of instructions and insolent. The employee walks up to the student, grabs their right arm and twists it behind the student’s back and with their left hand the teacher places pressure on the student’s left shoulder and pushes the student down on the chair.

**Example 8: Physical assault**

A student is taunting another student in class and refuses to stop. The employee grabs the student’s ear, twists and lifts the student so the student rises from their seat.

**Example 9: Physical assault**

A student chases a cricket ball onto a newly prepared garden bed. An employee firmly pushes the student on the shoulder causing the student to fall over, while shouting at the student to stay off the garden.

**Example 10: Physical assault**

During class, a student throws a small piece of wood that strikes another student. The employee responds by twisting the student’s arm behind the student’s back and pushes the student from the classroom. The force of the contact results in some physical injury.

**Example 11: Physical assault**

Without any prospect of physical contact with others, a student swears at a physical education teacher who responds by grabbing the student’s arm very firmly, leaving distinct fingernail marks.

### Verbal communication/intervention

**Example 12: Appropriate** **verbal communication**

A year 6 student is fooling around with another student by removing his pens from the desk, putting them out of sight and refusing to give them back. An employee approaches the offending student, makes eye contact, and says in a firm and controlled voice, “[Name] please give [other student’s name] pens back now.”

**Example 13: Inappropriate verbal communication**

A student is struggling to understand a maths problem. An employee orders the student to the front of the class, stands very close to the student and shouts at the student using words such as, “What’s the matter with you? Why don’t you understand?”

**Example 14: Appropriate verbal intervention**

Two students are chatting noisily at the rear of a classroom and have ignored several requests to stop. More students are becoming distracted by and involved in the disruptive behaviour. An employee moves towards the students and uses a raised voice and a clear statement to attract attention, but reverts to a normal tone once their attention is gained.

**Example 15: Inappropriate verbal intervention**

A twelve year old student has exhausted his allocated time on a computer and is refusing to allow the next student to access it. After repeated instructions, the employee in a raised voice yells from a distance to, “Get off the computer!” The student continues to ignore the employee who screams at the student, “Didn’t you hear me you ignorant pig? Do as you are told!”

### Non-physical contact/behaviour

**Example 16: Appropriate non-physical behaviour**

An employee is driving home and sees a student caught in a sudden downpour. The employee stops the car and the student accepts a lift home. It may be appropriate, especially in a small community for the employee to accompany the student to the door and explain the circumstances to the parent or carer.

**Example 17: Inappropriate non-physical behaviour**

An employee is aware that a student has advanced computer skills and invites the student to their house on the weekend to help load some software. The employee regularly invites the student to their home whenever they have a computing problem. This private arrangement exceeds the boundaries of a professional employee/student relationship.

**Example 18: Appropriate non-physical behaviour**

A 17 year old female student advises her male teacher that she is having problems at home with her alcohol dependent father and would like some advice. The teacher advises the student of the range of assistance available and invites the student to speak to him again if needed. The teacher discusses the issue with the principal and guidance officer before making a referral for the student to relevant assistance providers.

**Example 19: Inappropriate** **non-physical behaviour**

A physical education teacher accompanying students to a sporting carnival in a neighbouring town suggests sharing a motel room with several of the students to reduce expenses. While the employee’s motivation may be entirely honourable, the risks associated with the conduct are too high. Consequently, such an arrangement would be considered inappropriate.

### Sexual abuse and or sexual misconduct

**Example 20: Appropriate response**

A male employee is walking down a narrow corridor. Groups of students are talking animatedly and a 15 year old female student steps back suddenly and turns, apparently to attract the attention of a friend in another group and not being aware that the male employee is approaching. The employee’s upper arm comes into contact with the girl’s breasts. The teacher stops and apologises for bumping into the student.

**Example 21: Sexual misconduct**

An employee shows sexually explicit material to a student or leaves the material in a place where a student would be likely to access it. Such conduct would be regarded as sexual misconduct by the employee and may even represent a criminal offence.

**Example 22: Sexual misconduct**

After a school play, an employee approaches one of the student actors, saying, “I didn’t realise how grown up you were until I saw you in that outfit. The play went over really well. After we tidy up here, maybe you and I can get together to celebrate.”

**Example 23: Sexual misconduct**

An employee stands behind a 13 year old female student while she is playing the clarinet. The employee clasps her hands around the student’s ribs and diaphragm area to demonstrate proper breathing technique. The employee’s hands intentionally come into contact with the student’s breasts.

**Example 24: Sexual misconduct**

An employee engages in a sexual relationship with a student from a different state educational institution than where they are employed knowing the student is 17 years old. This is a breach of the department’s Standard of Practice and could amount to a report of sexual abuse under s.365 of the *Education (General Provisions) Act 2006*.

**Example 25: Sexual abuse**

An employee makes suggestive gestures to a student such as blowing kisses, rubbing hands over their own body, or unzipping or unbuttoning items of their own clothing. Such flirtatious behaviour exceeds the boundaries of a professional relationship between an employee and a student, is inappropriate and would be considered sexual harassment. If the employee exposed their genitalia to the student, such behaviour would be regarded as sexual abuse and a criminal offence.

**Example 26: Sexual abuse**

During quiet individual study time in class, an employee moves close to a student who is seated at a desk. The employee places their hand between the student’s legs and deliberately touches the student’s upper inner thigh and genital area saying, “I’ve always thought you were very attractive.”

### Failure to protect or report

**Example 27: Failure to protect**

Allegations of sexual abuse of a child have been made against an employee. The employee resigns from their employment and the Principal does not report the allegations to the Queensland Police Service and/or the Intake and Assessment team. Failure to act on the allegations in this instance would allow the employee to seek employment either with the department or in other child related employment and continue to sexually abuse children.

**Example 28: Acting protectively**

Allegations of sexual abuse have been made against an employee. The employee resigns from their employment and the Principal refers the allegations to the Queensland Police Service and the Intake and Assessment team. The matter is fully investigated by either the Queensland Police Service or the department, and if found to be substantiated the department undertakes a post-separation discipline process against the employee.

**Example 29: Failure to protect**

An employee in Human Resources discloses to their manager that they are going through a marriage breakdown and that they have engaged in a sexual relationship with their friend’s child, who is a state school student. The employee says that the sexual relationship has now ceased. The manager does not report the employee as they feel sorry for them and do not want to cause personal or financial strain which may come with reporting the allegation.

**Example 30: Failure to report**

A student discloses to their teacher that they have been sexually abused by another adult. The teacher does not provide a written report to their Principal until one week after the disclosure.

**Example 31: Appropriate reporting**

During class a teacher overhears students discussing a teacher being in a relationship with a 15 year old student. The teacher intervenes in the discussion and asks the students not to discuss the matter any further. The teacher at the end of the class provides a written report to their principal.

**Example 32: Failure to report**

A principal is notified by a teacher that a student has been sexually abused by a volunteer at the school. The student is known to the principal as someone who “makes up stories for attention or to get out of trouble”. The principal does not report the allegation to Queensland Police Service or the Intake and Assessment team.

**Example 33: Appropriate reporting**

A teacher aide supporting a student with a disability sees a text message on the child’s phone that the child is meeting with another person for sex. The teacher aide immediately provides a written report through OneSchool Student Protection Reporting module to the principal.

**Example 34: Failure to report**

An employee in IT is completing a job on another employee’s departmental device, and locates a folder containing sexualised images of children (i.e. child exploitation material). The IT employee does not report the employee to any other person within the department (i.e. their manager, the other employee’s manager or Intake and Assessment) or to the Queensland Police Service.

**Example 35: Failure to report**

An employee is at a barbecue with family members and friends. Their 14-year-old niece discloses that earlier in the afternoon an 18-year-old, who is not an employee, at the party took her into a bedroom and got her to pose for a nude photograph. The employee does not report the allegation to the Queensland Police Service.

*\*Note: as this circumstance is in a private capacity and does not involve allegations against an employee, the department would only become involved if police charged the employee with the Failure to report offence. The subsequent court process would be monitored to determine if further action were required by the department.*