

CHILD PROTECTION POLICY & PROCEDURES

1. Introduction

1.1 Purpose and Scope

The safety, protection and well-being of all students is of fundamental importance to Kesser Torah College ("KTC"/"The College").

This policy sets out staff responsibilities for child protection and processes that staff must follow in relation to child protection matters. This policy applies to all staff members, including employees, contractors and volunteers. Staff members who fail to adhere to this policy may be in breach of their terms of employment. The policy should be read in-conjunction with *A Guide to the Child Safe Standards*, issued by the Office of the Children's Guardian.

1.2 Key Legislation

There are four key pieces of Child Protection legislation in New South Wales (NSW):

- the *Children and Young Persons (Care and Protection) Act 1998* (NSW) ("Care and Protection Act")
- the *Child Protection (Working With Children) Act 2012* (NSW) ("WWC Act")
- the *Children's Guardian Act 2019* ("Children's Guardian Act")
- the *Crimes Act 1900* ("Crimes Act").

1.3 Child Safe Standards

The Child Safe Standards recommended by the Royal Commission provide a framework for making organisations safer for children. The standards provide tangible guidance for organisations to create cultures, adopt strategies and act to put the interests of children first, to keep them safe from harm.

- Standard 1 – Leadership and Culture
- Standard 2 – Children's Participation
- Standard 3 - Families and Communities
- Standard 4 – Equity and Diversity
- Standard 5 – Suitability of Workers
- Standard 6 – Complaint Handling
- Standard 7 – Knowledge and Skills
- Standard 8 – Physical and Online Environments
- Standard 9 – Continuous Improvement
- Standard 10 – Policies and Procedures

The staff at KTC are annually in-serviced on the Child Safe Standards, what they mean in schools and how they are specifically implemented at the College.

1.4 Related Policies

There are other KTC policies that relate to child protection. Staff members must be aware of and have an understanding of the following (but not limited to):

- *Code of Conduct* - sets out information about the standards of behaviour expected of all employees
- *Work Health and Safety Statement* – identifies obligations imposed by work health and safety legislation on KTC and staff members
- *Discrimination, Harassment and Bullying Statement* - summarises obligations in relation to unlawful discrimination, harassment and bullying
- *Procedure for Resolving Complaints / Grievances / Concerns and Allegations of Staff or Adult Misconduct*
- *Anti-Bullying Policy*
- *Information, Communication and Technology Policy*
- *Staff Recruitment Policy*.



Child Protection Policy

1.5 Compliance and Records

The College Principal or his delegate monitors compliance with this policy and securely maintains KTC records relevant to this policy, which includes:

- Register of staff members who have read and acknowledged that they have read and understood the Policy
- Working with Children Check Clearance verifications
- A register of Working with Children Checks maintained by the Executive Assistant (“EA”) to the College Principal
- Mandatory reports to Department of Communities and Justice (“DCJ”)
- Reports of Reportable Conduct allegations, the outcome of Reportable Conduct investigations, and/or criminal convictions.

Records are maintained by the EA to the College Principal and are stored in the EA Directory on the server and paper copies in the EA’s locked filing cabinet.

WWCC records and verification dates are electronically recorded in staff records on Edumate.

2. Child Protection

The safety, protection and welfare of students is the responsibility of all staff members and encompasses:

- A duty of care to ensure that reasonable steps are taken to prevent harm to students which could reasonably have been foreseen
- Obligations under Child Protection legislation.

With respect to the Early Learning Centre (ELC), the following Standards and Regulations apply

National Quality Standard (NQS)		
QA2	2.2.3	Child protection - Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect
National Regulations		
Regs	84	Awareness of child protection law

2.1 Child Protection Concerns

There are different forms of child abuse. These include neglect, sexual, physical and emotional abuse.

Emotional abuse can result in serious psychological harm, where the behaviour of their parent or caregiver damages the confidence and self-esteem of the child or young person, resulting in serious emotional deprivation or trauma.

Although it is possible for ‘one-off’ incidents to cause serious harm, in general it is the frequency, persistence and duration of the parental or carer behaviour that is instrumental in defining the consequences for the child. This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

Neglect is the continued failure by a parent or caregiver to provide a child with the basic things needed for his or her proper growth and development, such as food, clothing, shelter, medical and dental care and adequate supervision.

Physical abuse is a non-accidental injury or pattern of injuries to a child caused by a parent, caregiver or any other person. It includes but is not limited to injuries caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation and female genital mutilation.

Injuries include bruising, lacerations or welts, burns, fractures or dislocation of joints.

Hitting a child around the head or neck and/or using a stick, belt or other object to discipline or punish a child (in a non-trivial way) is a crime.

Sexual abuse is when someone involves a child or young person in a sexual activity by using their power over them or taking advantage of their trust. Often children are bribed or threatened physically and psychologically to make them participate in the activity. Child sexual abuse is a crime.

2.2 Child Wellbeing Concerns

Child wellbeing concerns are safety, welfare or wellbeing concerns for a child or young person that do not meet the mandatory reporting threshold, risk of significant harm in Section 5.1.2 of this document.

Child Protection Policy

2.3 Staff Member Responsibilities

Key legislation requires reporting of particular child protection concerns. However, as part of the College's overall commitment to child protection, **all staff** (this includes but is not limited to teaching staff, support staff, casual staff, administration staff and security) who come into contact with students are required to report any child protection or child wellbeing concerns about the safety, welfare or wellbeing of a child or young person to the: **College Principal** or his delegate (deemed to be the relevant Senior Manager – who will upon receiving the disclosure, immediately brief the College Principal); **Head of Primary** (Primary Students) or the **Head of Student Welfare** (High School) or **Director of Early Learning** (Early Learning students) or **College Counsellor** who in turn will report to the **College Principal**.

If the allegation involves the College Principal, a report should be made to the **President of the Board of Management**.

3. Training

3.1 Kesser Torah College (KTC)

KTC provides all staff members with a copy of this Policy, a copy of the document *A guide to the Child Safe Standards* and will provide all staff members with Child Protection Training on an annual basis. It is mandatory for all staff who are in contact with children to attend this annual training. The annual training will consist of at least one of the following: an AIS approved online training course coordinated by a member of the Senior Management Team and/or face-to-face training with an accredited external consultant and/or in-house training by a member of the Senior Management Team. In addition, there will be an annual review of the College's Child Protection Policy and Procedures.

The College will keep a copy of the in-service training material presented to staff who have missed the training session. These materials will be electronically filed by the EA to the College Principal in the '*Teachers drive/child protection training*'.

ELC staff requirements include:

- documented induction/orientation checklists which reference child safety and protection, supervision, compliance with National Law and Regulations, NQS, Code of Conduct, policies and procedures
- annual training and development to ensure individuals are clear about roles and responsibilities to protect children from harm, are aware of their reporting obligations, can confidently recognise the indicators of harm and understand documenting and reporting procedures
- annual performance appraisals of employees
- regular inclusion of child protection and risk management strategy **at least every 6 months** in staff meetings and annual review of written training plans which must include Child Protection matters
- providing access to relevant legislation and other resources to help employees and volunteers meet their obligations

3.2 Staff Members

All staff must read this Policy and sign Acknowledgement that they have read and understood the policy.

All staff must participate in annual Child Protection training and additional training, as directed by the College Principal. The training complements this Policy and provides information to staff about their legal responsibilities related to Child Protection and to KTC's expectations, including:

- mandatory reporting
- reportable conduct
- staff and adult misconduct
- working with children check
- maintaining professional boundaries.

New staff who arrive after the annual training will be required to sign and acknowledge their understanding of this Policy and will be provided with in-house training as part of their induction. Staff will also be required to read *A Guide to the Child Safe Standards*, issued by the Office of the Children's Guardian.

4. Working with Children

The WWC Act protects children by requiring a worker to have a Working with Children's Check clearance or current application to engage in child-related work. Failure to do so may result in a fine or imprisonment.

Child Protection Policy

The Office of the Children’s Guardian (“OCG”) is responsible for determining applications for a Working with Children Check Clearance (“WWCC clearance”). It involves a national criminal history check and review of reported workplace misconduct findings.

The result is either to:

- grant a WWCC clearance (generally valid for five years)
- refuse a WWCC clearance (further applications cannot be made for five years).

In addition, the OCG may impose an interim bar on engaging in child-related work for both applicants and WWCC clearance holders.

WWCC clearance holders are subject to ongoing monitoring by the OCG.

4.1 Responsibilities for Working with Children Checks

4.1.1 Staff members

KTC staff who engage in child-related work and eligible volunteers (including those volunteers working at overnight camps) are required to:

- hold and maintain a valid WWCC clearance
- not engage in child-related work at any time that they are subjected to an interim bar or a bar
- report to the College Principal if they are no longer eligible for a WWCC clearance, the status of their WWCC clearance changes, or they are notified by the OCG that they are subject to a risk assessment
- notify the Children’s Guardian of any change to their personal details within three months of the change occurring. Failure to do so may result in a fine.

It is an offence for an employee to engage in child-related work when they do not hold a WWCC clearance or if they are subject to a bar.

All volunteers are required to be aware of and follow the expectations of conduct expressed in the College Staff Code of Conduct.

4.1.2 KTC

The College:

- verifies online and records the status of each child-related worker’s Check
- only employs or engages child-related workers or eligible volunteers who have a valid Check
- reports to the OCG any findings made after completing a reportable conduct investigation, including whether there has been a finding of “Reportable Conduct” itself. A finding of reportable Conduct in relation to sexual misconduct or a serious physical assault must be referred to the OCG’s Working with Children Directorate (WWCC Directorate). It is an offence for an employer to knowingly engage a child-related worker when they do not hold a WWCC clearance or who has a bar.

The College Principal and his EA monitor the above and maintain records. Details are entered electronically into staff records on Edumate and filed in individual staff files in the EA’s locked filing cabinet. Reportable Conduct Investigation documents are stored in a locked cupboard in the College Principal’s Office. A brief file note with reference to the investigation is also placed in the staff file.

The Nominated Supervisor of the ELC will keep copies of the verified Working with children checks of all Staff, eligible Volunteers and Casuals.

4.2 Working with Children Check Clearance

A WWCC clearance is authorisation under the WWC Act for a person to engage in child-related work.

4.2.1 Child-Related Work

Child-related work involves direct contact by the worker with a child or children and that contact is a usual part of and more than incidental to the work. Child-related work includes, but is not limited to work in the following sectors:

- early education and childcare including education and care service, childcare centres and other childcare
- Colleges and other educational institutions and private coaching or tuition of children
- religious services
- residential services including boarding Colleges, homestays more than three weeks, residential services and overnight camps

- transport services for children including College bus services, taxi services for children with disability and supervision of College road crossings
- counselling, mentoring or distance education not involving direct contact.

Any clarification with respect to whether certain roles/duties engage in child-related work should be directed to the College Principal.

4.2.2 Application/Renewal

An application or renewal can be made through Service NSW or its replacement agency. The process for applying for and renewing a WWCC clearance with the OCG involves a national police check and a review of findings of misconduct.

If the OCG grants or renews a WWCC clearance, the holder will be issued with a number which is to be provided to the College to verify the status of a staff member's WWCC clearance.

4.2.3 Refusal / Cancellation

The OCG can refuse to grant a WWCC clearance or cancel a WWCC clearance. The person is then restricted from engaging in child-related work and not able to apply for another clearance for five years. Employers are notified by the OCG and instructed to remove such persons from child-related work.

4.2.4 Interim Bar

The OCG may issue an interim bar, for up to 12 months, to high-risk individuals to prevent them from engaging in child-related work while a risk assessment is conducted. If an interim bar remains in place for six months or longer, it may be appealed to the Administrative Decisions Tribunal. Not everyone who is subject to a risk assessment will receive an interim bar; only those representing a serious and immediate risk to children.

4.2.5 Disqualified Person

A disqualified person is a person who has been convicted, or against whom proceedings have been commenced for a disqualifying offence outlined in Schedule 2 of WWC Act.

A disqualified person cannot be granted a Working with Children Check Clearance and is therefore restricted from engaging in child-related work.

4.3 Ongoing Monitoring

The OCG will continue to monitor criminal records and professional conduct findings of all WWCC clearance holders through a risk assessment process.

4.3.1 Risk Assessments

A risk assessment is an evaluation of an individual's suitability for child-related work.

The OCG will conduct a risk assessment on a person's suitability to work with children when a new record is received which triggers a risk assessment. This may include an offence under Schedule 1, pattern of behaviour or offences involving violence of sexual misconduct representing a risk to children, findings of misconduct involving.

4.4 Process for Reporting to OCG

4.4.1 KTC

Independent Colleges, like KTC, are defined as a "reporting body" by the WWC Act.

KTC is required to notify the OCG of findings made after the completion of a reportable conduct investigation, including whether there has been a finding of "reportable conduct". A finding of "reportable conduct" in relation to sexual misconduct, a sexual offence or a serious physical assault must, and will be, reported to the OCG's WWCC Directorate. Information must also be referred internally to the OCG's WWCC Directorate if it meets the threshold for consideration of an interim WWCC bar (Section 17 of the WWCC Act) pending a formal **risk assessment**

KTC may also be obliged to report, amend or provide additional information to the OCG as outlined in the WWC Act and the Children's Guardian Act.

4.4.2 Finding of Misconduct Involving Children

KTC will report to the OCG any findings of "reportable conduct".

When informing an employee of a finding of "reportable conduct" against him/her, KTC will also alert him/her to the consequent report to the WWCC Directorate in relation to sustained findings of sexual misconduct, a sexual offence or a serious physical assault.

The WWCC Act enables a person who has a "sustained finding" referred to the OCG to request access to the records held by KTC in relation to the finding of misconduct involving children, once these final findings have

been made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act are triggered when a finding of misconduct involving children has been made. A request for records should be made directly to the OCG.

4.4.3 Other Information

KTC may also be required to provide information to the OCG that is relevant to an assessment of whether a person poses a risk to the safety of children or the OCG's monitoring functions.

5. Mandatory Reporting

The Care and Protection Act provides for **Mandatory Reporting** of children at risk of significant harm. A "child" is a person under the age of 16 years and a "young person" is aged 16 years or above but who is under the age of 18, for the purposes of the Care and Protection Act.

Under the Care and Protection Act **Mandatory Reporting** applies to persons who:

- in the course of their employment deliver services to children including: health care; welfare; education; children's services; and residential services
- hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services and residential services, to children, are mandatory reporters.

All teachers and support staff are mandatory reporters. The College also requires all other staff, as noted in Section 2.3 of this document, to **report any concerns** about a child's/young person's welfare to the College Principal or his delegate.

5.1 Reports to The Department of Communities and Justice ("DCJ")

A mandatory reporter must, where he/she has reasonable grounds to suspect that a child (under 16 years of age) is at risk of significant harm, report to DCJ as soon as practicable.

The report must include the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

In addition, KTC may choose to make a report to DCJ where there are reasonable grounds to suspect a young person (16 or 17 years of age) is at risk of significant harm and there are current concerns about the safety, welfare and wellbeing of the young person.

In the Independent Schools' sector, a mandatory reporter will meet his/her obligation if he/she makes a report to the College Principal. This centralised reporting model ensures that a person in the College has all the information that may be relevant to the circumstances of the child at risk of significant harm - and addresses the risk of the College not being aware of individual incidences that amount to cumulative harm.

5.1.1 Reasonable Grounds

'Reasonable grounds' refers to the need to have an objective basis for suspecting that a child or young person may be at risk of significant harm, based on:

- first-hand observations of the child, young person or family
- what the child, young person, parent or another person has disclosed
- what can reasonably be inferred based on professional training and/or experience.

'Reasonable grounds' does not mean a person is required to confirm their suspicions or have clear proof before making a report.

5.1.2 Significant Harm

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or wellbeing of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met
- the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care
- in the case of a child or young person who is required to attend the College in accordance with the *Education Act 1990* —the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act
- the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated

- the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm
- a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm
- the child was the subject of a pre-natal report under Section 25 of the Care and Protection Act and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or wellbeing.

The significance can result from a single act or omission or an accumulation of these.

5.2 Process for Mandatory Reporting

5.2.1 KTC Staff Members

KTC Staff members must raise concerns about a child or young person who may be at risk of significant harm with the College Principal as soon as practicable to assess whether the matter meets the threshold of "risk of significant harm" and the steps required to report the matter. However, if the College Principal is unavailable at that time, then the matter must be reported to: the Head of Primary for Primary School students; Director of Early Learning for Early Learning students, the Head of High School Student Welfare for High School students or the College counsellor.

However, if there is an immediate danger to the child or young person and the College Principal or next most senior member of staff is not contactable, staff members should contact the Police and/or the Child Protection Helpline (13 21 11) directly and then advise the College Principal or next most senior member of staff at the College as soon as practicable.

Staff members are not required to, and must not, undertake any investigation of the matter. Staff members are not permitted to inform the parents or caregivers that a report to the DCJ has been made. Staff members are required to deal with the matter confidentially and only disclose it to the persons referred to above or as required to comply with mandatory reporting obligations. Failure to maintain confidentiality will not only be a breach of this Policy but could incite potential civil proceedings for defamation.

5.2.2 KTC

In general, the College Principal or his delegate will report these matters to the DCJ and, where necessary, the Police. This is supported by the DCJ in accordance with best practice principles.

In ELC – the Approved Provider, Nominated Supervisor employees and volunteers will:

1. Consider whether disclosure or suspicion needs to be reported to Police
 - contact the Police on 000 if there is an immediate danger to a child and intervene immediately if it safe to do so
 - contact the Police where the child has ben or may be the victim of a criminal offence (including where a child is at risk of significant harm outside the family)
 - get clear guidance from Police about who will tell the child's parents about the disclosure and who can give ongoing support
2. Consider whether the disclosure or suspicion must be reported to Child Protection
 - Use the online Mandatory reporter guide which is available on the Child Story Reporter website to help make decisions about whether there is a risk of significant harm
 - Make a report by phone to the Child Protection Helpline on 132 111(available 24 hours/7 days a week) EReporting is available for non-urgent notifications at Child Story Reporter website
3. Consider whether referral is needed to family services
 - Connect families with referral agencies where concerns of harm do not meet the threshold of significant harm. Contact details are available in the resources section of the Child Story Reporter website. Obtain family consent before making referrals
 - exchange information with referral agencies or other allowable organisations/people as outlined above under heading 'Exchanging Information' if you reasonably believe this may help other specified organisations/people to ensure the safety, welfare or wellbeing of children.

4. Consider whether you must notify ECEC Regulatory authority and other authorities

- Notify the regulator about any incident, including suspected or alleged incident of child abuse that has occurred at the service. This includes any physical or sexual abuse that has occurred or is occurring while the child is at the service.

5.3 Process for Reporting Concerns About Students

5.3.1 KTC Staff Members

The Care and Protection Act outlines a mandatory reporter's obligation to report to the DCJ concerns about risk of significant harm. However, to ensure centralised reporting, all staff members are required to report any concern regarding the safety, welfare and wellbeing of a student to the College Principal or his delegate, if he is unavailable. Staff members who are unsure as to whether a matter meets the threshold of 'risk of significant harm' should report their concern to the College Principal regardless.

Staff members are required to deal with all reports regarding the safety, welfare or wellbeing of a student confidentially, and only disclose details to the College Principal, or in his absence, his delegated senior manager.

6. Reportable Conduct

Section 29 of the *Children's Guardian Act 2019* requires the Heads of Entities, including non-government schools in New South Wales, to notify the OCG of all allegations of reportable conduct and convictions involving an 'employee' and the outcomes of the College's investigation of these allegations. Under the *Children's Guardian Act 2019*, allegations of child abuse only fall within the reportable conduct jurisdiction if the involved individual is an employee of the relevant entity at the time when the allegation becomes known by the Head of Entity.

At KTC, the College Principal, in his position as the Head of Entity must **notify the OCG** of any allegations or conviction that is reportable.

This must be done within seven (7) business days (from when the matter was reported). After conducting an investigation into the allegations, the College Principal then produces a **Final Report** which needs to be submitted within thirty (30) calendar days.

If the final entity report is not ready for submission within this timeframe, the College Principal needs to provide an **Interim Report** which includes information regarding the progress of the investigation, including an expected timeframe for completion.

Under the *Children's Guardian Act 2019*, allegations of child abuse only fall within the "reportable conduct" jurisdiction if the involved individual is an employee of the College at the time when the allegation becomes known to the College Principal.

Reportable Conduct involves:

- any employee, whether or not employed in connection with work or activities that relates to children, and any individual engaged by the agency to provide services to children (e.g. contractors, volunteers, work experience participants, clergy, ministers of religion and instructors of religion who provide pastoral or liturgical services)
- a child (a person under the age of 18 years) at the time of the alleged incident; and
- conduct that meets the definition of Reportable Conduct as defined in the Act.

(a) Early Learning - Exchanging Information

Note Chapter 16A of the *Children's and Young Person's (Care and Protection) Act 1998* enables children's services to exchange information they reasonably believe may help other specified organisations/people to ensure the safety, welfare or wellbeing of children, and help the organisations/people make decisions, conduct investigations, provide services or manage risks to a child. Organisations include NSW Police, State government departments or public authorities, schools, public health organisations, private health facilities, nurses, doctors, midwives, psychologists, occupational therapists, speech pathologists and bodies like family referral services. This aims to ensure children receive the help they may need.

Information sharing applies whether or not concerns of harm meet the mandatory reporting threshold of significant harm, and would only be declined if this may endanger a person's life or physical safety, prejudice an investigation, not be in the public interest etc. Consent is not necessary, but consent should be sought where possible from families (and children if old enough) unless this would further jeopardise a child or place another person at risk.

The OCG:

- must keep under scrutiny the systems for preventing reportable conduct by employees of non-government Colleges and the handling of, or response to, reportable allegations (including allegations which are exempt from notification) or convictions
- must receive and assess notifications from non-government Colleges concerning Reportable Conduct or reportable convictions
- is required to oversee or monitor the conduct of investigations by non-government Colleges into allegations of reportable or reportable convictions
- must determine whether an investigation that has been monitored has been conducted properly, and whether appropriate action has been taken as a result of the investigation
- may directly investigate an allegation of reportable conduct or reportable conviction against an employee of a non-government College, or the handling of or response to such a matter (e.g. arising out of complaints by the person who is the subject of an allegation)
- may investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification, if the OCG considers it appropriate to do so.

6.1 Reportable Conduct

Under the *Children's Guardian Act 2019* **Reportable Conduct** is defined as:

- any sexual offence
- sexual misconduct
- an assault against a child
- ill-treatment of a child
- neglect of a child
- an offence under section 43B (failure to report) of the Crimes Act 1900; and
- behaviour that causes significant psychological or emotional harm to a child

Reportable conduct does **not** extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards
- the use of physical force, that in all circumstances, is trivial or negligible, and the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures
- conduct of a class or kind which is exempted from being Reportable Conduct by the OCG under Section 30.

6.1.1 Definitions

The following definitions relate to reportable conduct:

Sexual Offence: encompasses all criminal offences involving a sexual element that are 'committed against, with or in the presence of a child'.

These offences include (but are not limited to) the following:

- indecent assault
- sexual assault
- aggravated sexual assault
- sexual intercourse and attempted sexual intercourse
- possession/ dissemination/ production of child pornography or child abuse material
- using children to produce pornography
- grooming or procuring children under the age of 16 years for unlawful sexual activity
- deemed non-consensual sexual activity on the basis of special care relationships
- sexual touching of a child
- production, dissemination or possession of child abuse material.

Definitions of 'grooming' within Child Protection legislation are complex. Under the Crimes Act, grooming or procuring a child under the age of 16 years for unlawful sexual activity is classed as a sexual offence. The Crimes Act (s73) also extends the age of consent to 18 years when a child is in a 'special care' relationship.

Under Schedule 1(2) of the Child Protection (Working with Children) Act, grooming is recognised as a form of sexual misconduct.

The Children's Guardian Act 2019 and this Policy reflect these definitions within the context of the Reportable Conduct Scheme (Division 2).

An alleged sexual offence does not have to be the subject of criminal investigation or charges for it to be categorised as a reportable allegation of sexual offence.

Grooming: refers to patterns of behaviour or conduct aimed at engaging with an alleged victim for sexual activity. Types of grooming behaviours may include:

- persuading a child or children that there is a 'special' relationship'
- inappropriate gift-giving
- special favours/breaking rules
- spending inappropriate amounts of time with a child
- secret relationship, tactics to keep relationship secret
- testing boundaries (touching, physical contact, undressing in front of child, talking about sex)
- extending relationship outside of work.
- personal communication about personal or intimate feelings

Sexual misconduct: has three categories:

- crossing professional boundaries
- sexually explicit comments
- other overtly sexual behaviour, and grooming

The alleged conduct must have been committed against, with or in the presence of a child.

Crossing professional boundaries: Sexual misconduct includes behaviour that can reasonably be construed as involving an inappropriate and overly personal or intimate relationship with, conduct towards, or focus on a child or young person, or a group of children or young persons.

The College's *Staff Code of Conduct* outlines the nature of the professional boundaries which should exist between employees and children/young people. Employees who either intentionally breach such codes or have demonstrated an inability to apply them appropriately may face disciplinary action.

Sexually explicit comments and other overtly sexual behaviour: Behaviour involving sexually explicit comments and other overtly sexual behaviour which can constitute sexual misconduct. Some forms of this behaviour also involve crossing professional boundaries.

This conduct may include:

- inappropriate conversations of a sexual nature
- comments that express a desire to act in a sexual manner
- unwarranted and inappropriate touching
- sexual exhibitionism
- personal correspondence (including electronic communications such as e-mails and text messages) with a child or young person in relation to the adult's sexual feelings for a child or young person
- exposure of children and young people to sexual behaviour of others including display of pornography
- watching children undress. For example, in change rooms or toilets when supervision is not required or justified.

Physical assault: is any act by which a person intentionally inflicts unjustified use of physical force against another. An assault can also occur if a person causes another person to reasonably apprehend that unjustified force is going to be used against them. Even if a person who inflicts physical harm or causes another person to reasonably apprehend physical harm does not actually intend to inflict the harm or cause fear, they may still have committed an assault if they acted 'recklessly'.

'Recklessness' in this context relates to circumstances when the person ought to have known that their actions would cause a person physical harm or cause them to fear injury.

Ill-treatment: captures those circumstances where a person treats a child in an unreasonable and seriously inappropriate, improper, inhumane or cruel manner. The focus is on the alleged conduct rather than the actual effect of the conduct on the child.

Ill-treatment can include disciplining or correcting a child in an obviously unreasonable and seriously inappropriate manner; making excessive and/or degrading demands on a child; hostile use of force towards

a child; and/or pattern of hostile or unreasonable and seriously inappropriate, degrading comments or behaviour towards a child.

Neglect: includes either an action or inaction by a person who has care and/or responsibility towards a child. The nature of the employee's responsibilities provides the context against which the conduct needs to be assessed.

Supervisory neglect:

- An intentional or reckless failure to adequately supervise a child that results in the death of, or significant harm to, a child, or
- An intentional or reckless failure to adequately supervise a child or a significantly careless act or failure to act, that:
 - Involves a gross breach of professional standards
 - Has the potential to result in the death or significant harm to a child.

Carer neglect:

- Grossly inadequate care that involves depriving a child of the basic necessities of life such as the provision of food and drink, clothing, critical medical care or treatment, or shelter.

Failure to protect from abuse:

- an obviously or very clearly unreasonable failure to respond to information strongly indicating actual or potential serious abuse of a child.

Reckless act (or failure to act):

- A reckless act, or failure to act, that:
 - Involves a gross breach of professional standards
 - Has the potential to result in the death of, or significant harm to, a child

Assaults can include hitting, pushing, shoving, throwing objects or making threats to physically harm a child.

Emotional/Psychological Harm: is caused by behaviour that is obviously or very clearly unreasonable and results in significant harm or trauma to a child. There needs to be a proven causal link between the inappropriate behaviour and the harm, and the harm must be more than transient.

Reportable conviction: means a conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct.

The alleged conduct must have been committed against, with or in the presence of a child.

PSOA: 'person subject to the allegation'.

Child: is a person under the age of 18 years for the purposes of the Children's Guardian Act.

Employee:

- An individual employed by, or in, KTC
- A volunteer providing services to children
- A contractor engaged directly by KTC (or by a third party) where the contractor holds, or is required to, a WWCC clearance for the purposes of their work with KTC; and
- A person engaged by an external religious body/organisation, where that person holds, or is required to hold, a WWCC clearance for the purposes of their work with the religious body or at KTC

6.2 Process for Reporting of Reportable Conduct Allegations or Convictions

6.2.1 Staff Members

Any concerns about any other employee engaging in conduct that is considered inappropriate, or Reportable Conduct; or Staff Misconduct; or any allegation of inappropriate, or Reportable Conduct made to the employee or about the employee themselves must be reported to the **College Principal** or his Delegate. Where it is uncertain if the conduct is Reportable Conduct but is considered inappropriate behaviour, this must also be reported.

If the behaviour does not meet the definition of **Reportable Conduct**, the allegations will be investigated according to the College's *Procedures for Conducting an Internal Investigation into Allegations of Staff and Adult Misconduct*. These procedures are explained in this document (see clause 6.5). They are also explained in the College's separate document *Procedure for Resolving Complaints, Grievances, Concerns and Allegations of Staff or Adult Misconduct* (which can be found on the College's website). For concerns or grievances regarding educational or operational matters, including concerns or grievances in relation to fees or Halachic/Ethos issues, please also see the separate abovementioned Policy and Procedures document. (This

can be located on the College's website or for staff on the drive: '*Staff common/KTC Policies and Procedures/Guidelines/KTC-GDL-001 (Complaints)_r3*').

Staff members must also report to the **College Principal** or his Delegate when they become aware that an employee has been charged with or convicted of an offence (including a finding of guilt without the court proceeding to a conviction) involving Reportable Conduct. This includes information relating to the employee themselves.

If the allegation involves the College Principal, the staff member must report the matter to the **President of the Board of Management**.

6.2.2 Parents, Carers and Community Members

Parents, carers and community members are encouraged to report any conduct that is in their view inappropriate, reportable, staff misconduct (see 6.5 definition below) or criminal conduct to the **College Principal** or his Delegate, by email, in person or via a telephone call. The College may require a complaint to be put in writing and will acknowledge receipt of same within 48 hours. All such complaints will be dealt with in accordance with the College's complaint handling procedures (see the College's Website for the published *Guidelines for Resolving Complaints/ Grievances* which deals with complaints and grievances relating to students' academic and/or social progress; classroom matters and concerns; fees issues or *halachic* concerns.) Where there are concerns or allegations of improper staff conduct (i.e. Staff Misconduct) see 6.5 below of this document.

6.2.3 The College

The College Principal, as the Head of Entity under the *Children's Guardian Act 2019*, must:

- Ensure specified systems within KTC are in place for preventing, detecting and responding to reportable allegations or convictions
- submit a 7-day notification form to the OCG within 7 business days of becoming aware of a reportable allegation or conviction against an employee of KTC. The notification should include the following information:
 - that a report has been received in relation to an employee of the College, and
 - the name of the employee, and
 - the name and contact details of the College and the Principal (as Head of Entity) and
 - for a reportable allegation, whether it has been reported to the Police, and
 - if a report has been made to the Child Protection Helpline, and
 - the nature of KTC's initial risk assessment and risk management action
- The notice must also include the following, if known to the College Principal:
 - Details of the reportable allegation or conviction considered to be a reportable conviction,
 - The date of birth and Working with Children number, if any, of the employee who is the subject of the report,
 - The Police report reference number (if the matter was reported to the Police),
 - The report reference number if the matter was reported to the Child Protection Helpline,
 - The names of other relevant entities that employ or engage the employee, whether or not directly, to provide a service to children, including as a volunteer or contractor
- There is a maximum penalty for failure to notify within 7 business days: 10 penalty units.

6.3 Process for Investigating and Allegation of Reportable Conduct

The College Principal ensures that the following steps are taken to investigate an allegation of Reportable Conduct.

6.3.1 Initial Steps

Once an allegation of Reportable Conduct against an employee is received, the College Principal is required to:

- determine on face value whether it is an allegation of "Reportable Conduct"
- assess whether the DCJ or the police need to be notified (i.e. if there are reasonable grounds to suspect that a child is at risk of significant harm or a potential criminal offence). If they have been notified, seek clearance from these statutory agencies prior to the College proceeding with the Reportable Conduct investigation
- notify the child's parents (unless to do so would be likely to compromise the investigation or any investigation by the DCJ or Police)

- notify the OCG within 7-business days of receiving the allegation
- carry out a Risk Assessment and take action to reduce/remove risk, where appropriate, and
- provide an initial letter to the PSOA advising that an allegation of Reportable Conduct has been made against him/her and the College's responsibility to investigate this matter under Section 34 of Children's Guardian Act 2019; and
- investigate the allegation or appoint someone to investigate the allegation.

6.3.2 Investigation Principles

During the investigation of a Reportable Conduct allegation the College will:

- follow the principles of procedural fairness
- inform the PSOA of the substance of any allegations made against him/her, at the appropriate time in the investigation, and provide him/her with a reasonable opportunity to respond to the allegations
- make reasonable enquiries or investigations before making a decision
- avoid conflicts of interest
- conduct the investigation without unjustifiable delay
- handle the matter as confidentially as possible, and
- provide appropriate support for all parties including the child/children, witnesses and the PSOA.

6.3.3 Investigation Steps: The Process

In an investigation the College Principal or appointed investigator will:

- formally interview the person making the allegation
- interview relevant witnesses and gather relevant documentation
- provide a letter of allegation to the PSOA
- provide the PSOA with the opportunity to provide a response to the allegations either in writing or at an interview
- consider relevant evidence and make a **"preliminary finding"** in accordance with the OCG guidelines
- inform the PSOA in writing, of the preliminary finding, by the College Principal and provide the PSOA with a further opportunity to respond or make a further submission prior to the matter moving to **"Final findings"**
- consider any response provided by the PSOA
- make a **final finding** in accordance with the OCG guidelines
- decide on the disciplinary action, if any, to be taken against the PSOA
- send the final report to the OCG within 30 days of having received the allegation (if it is completed) as per section 36 of the Children's Guardian Act 2019
- should the final report be unfinished within 30 days, the College Principal must provide, at minimum, an **interim report** to the OCG within 30 days of having received the allegation, as per section 38 of the Children's Guardian Act 2019
- Submission of an **interim report** must include:
 - A reason for not providing the final report within 30 days and an estimated time frame for the completion of the report
 - Specific information, including (if known) the facts and circumstances of the reportable allegation; and any known information about a reportable conviction; action taken since the OCG received a notification about the reportable allegation or reportable conviction; including if the College Principal proposes to take no further action; the reasons for any action taken and the action proposed to be taken or the reasons for the decision not to take any further action; other information prescribed by the regulations; and
 - Be accompanied by copies of documents in the College's possession, including transcripts of interviews and copies of any evidence.

The steps outlined above may need to be varied on occasion to meet particular circumstances. For example, it may be necessary to take different steps where the matter is also being investigated by the DCJ or the Police.

A PSOA may have an appropriate support person with him/her during the interview process. Such a person is there for support only and as a witness to the proceedings and not as an advocate or to take an active role.

6.4 Risk Management Through an Investigation of a Reportable Conduct Allegation

Risk management means identifying the potential for an incident or accident to occur and taking steps to reduce the likelihood or severity of its occurrence.

The College Principal is responsible for risk management throughout the investigation and will assess risk at the beginning of the investigation, during and at the end of the investigation.

(a) Early Learning Risk Management Plan for High Risk Activities and Special Events

The Nominated Supervisor and educators will analyse the risk of “harm” to children for all relevant events including purchase of new equipment as well as high risk activities where there is an increased risk of harm to children for example:

- Water based activities
- Special events like service concerts and family information days where there will be a large number of visitors or people present
- Events or activities where visitors will be present
- Excursions
- Playground renovations
- Activities using dangerous equipment

The Nominated Supervisor and educators will:

- Identify all the elements of an activity (e.g. objectives, location, participants, transportation, toileting/change room procedures, appropriate supervision and adult to child ratios, photography policy, managing medications, managing illness and injury, procedure applying to visitors, physical environment)
- Identify the risks
- Analyse the likelihood and consequences of the risks
- Evaluate the level of risk (e.g. low, moderate, high, extreme)
- Implement strategies to eliminate or minimise the risk
- Review the activity to determine how it could be improved

Where relevant (e.g. playground renovations) the Nominated Supervisor will encourage families to provide feedback on the risk of harm to children and strategies to minimise the risk. Feedback may be sought via emails, using the Storypark App or during parent information sessions.

6.4.1 Initial Risk Assessment

Following an allegation of reportable conduct against an employee the College Principal or the Delegate conducts an initial risk assessment to identify and minimise the risks to:

- the child/children who are the subject of the allegation
- other children with whom the employee may have contact
- the PSOA
- the College itself
- the proper investigation of the allegation.

The factors which will be considered during the risk assessment include:

- the nature and seriousness of the allegations
- the vulnerability of the child/children the PSOA has contact with at work
- the nature of the position occupied by the PSOA
- the level of supervision of the PSOA
- the disciplinary history or safety of the PSOA and possible risks to the investigation.

The College Principal or his Delegate will take appropriate action to minimise risks. This may include the PSOA being temporarily relieved of some duties; being required not to have contact with certain students; being asked to take paid leave; or being suspended from duty.

When taking action to address any identified risks, the college will take into consideration both the needs of the child/ren and the PSOA. A decision to take action on the basis of a risk assessment is not indicative of the findings of the matter. Until the investigation is complete and a finding is made, any action, such as an employee being suspended, is not to be considered to be an indication that the alleged conduct by the employee did occur.

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6.4.2 Ongoing Risk Assessment

The College Principal or his Delegate will continually monitor risk during the investigation including in the light of any new relevant information that emerges.

6.4.3 Findings

At the completion of the investigation, a finding will be made in relation to the allegation and a decision made by the College Principal or his Delegate regarding what action, if any, is required in relation to the PSO, the child/children involved and any other parties.

6.4.4 Information for the PSO

The PSO will be advised:

- that an allegation has been made against him/her (at the appropriate time in the investigation) and
- of the substance of the allegation, or of any preliminary finding and the final finding.

The PSO does not automatically have the right to:

- know or have confirmed the identity of the person who made the allegation; or
- be shown the content of the OCG notification form or other investigation material that reveals information provided by other employees or witnesses.

The WWC Act enables a person who has a finding referred to the OCG to request access to the records held by the College in relation to the finding of misconduct involving, once final findings are made. The entitlements of a person to request access to information in terms of section 46 of the WWC Act is enlivened when a finding of misconduct involving children has been made.

6.4.5 Disciplinary Action

As a result of the allegations, investigation or final findings, the College may take disciplinary action against the PSO (including termination of employment).

In relation to any disciplinary action the College will give the PSO:

- details of the proposed disciplinary action, and
- a reasonable opportunity to respond before a final decision is made, need to be provided

6.4.6 Confidentiality

It is important when dealing with allegations of reportable conduct that the matter be dealt with as confidentially as possible.

The College requires that all parties maintain confidentiality during the investigation including in relation to the handling and storing of documents and records.

Records about allegations of Reportable Conduct against employees will be kept in the College Principal's office in a locked file and will be accessible by the College Principal or his Delegate with the College Principal's express authority.

No employee may comment to the media about an allegation of reportable conduct unless expressly authorised by the College Principal to do so.

Staff members who become aware of a breach of confidentiality in relation to a Reportable Conduct allegation must advise the College Principal.

6.5 Staff or Adult Misconduct

6.5.1 Definition of Misconduct

Behaviour, conduct or actions committed by staff or adults working in the College that falls outside the Mandatory Reporting Guidelines, or the Reportable Conduct Guidelines but is nevertheless deemed to have been unprofessional or inappropriate in nature and to have had a negative impact on students.

Allegations of staff or adult misconduct need to be raised with the College Principal or his delegate via email, phone call or in person. The College may require the allegation to be put in writing and will acknowledge receipt of same within 48 hours. The College Principal or his delegate will then conduct an **internal investigation** into any allegations of staff or adult misconduct.

In matters relating to the Early Learning Centre, irrespective of whether there is or there is not substantiated misconduct, as determined by the internal investigation, any parental complaint about any kind of inappropriate mishandling of children will need to be reported by the College, as the approved provider, to the NSW Department of Education (through the NQAITs portal) as a matter of course.

6.5.2 Internal Investigation Procedure

- (a) If there is an allegation of misconduct, against an employee, volunteer or any other adult at the College, the College Principal or his delegate will advise such person of the allegation(s) against him/her and also the likely process and timeframe of the investigation that will be conducted.
- (b) The person who is making the allegation will be interviewed by the College Principal and one other senior staff member. Comprehensive notes will be taken during the interview. The College Principal may engage an external investigator as appropriate. At the end of the interview, the file note of the meeting will be read back to the interviewee in order for him/her to correct or amend any details pertaining to the allegations.
- (c) Any, and all, witnesses will be interviewed by the College Principal/his delegate. Again, detailed records of all interviews will be made and retained.
- (d) Any and all other evidence will be collected (e.g. CCTV footage, IT records, security records, photographs, etc) from the College facilities or from witnesses.
- (e) The person against whom an allegation has been made will be interviewed by the College Principal/his delegate.
- (f) A follow-up discussion will be held with the person making the allegation/s in order to provide feedback regarding the investigation. During this discussion, it may be important to further clarify the allegations in order that any additional responses, clarifications, etc can be made.
- (g) Once all interviews have been concluded, the College Principal/his delegate will analyse all the information collected and deliberate the matters in order to ascertain whether or not the allegations can be substantiated or not.
- (h) Thereafter, the College Principal/his delegate, will determine what specific consequences or actions should be taken, including but not limited to:
 - i. consulting with, reporting the matter to, or the investigation of the incident by an external agency
 - ii. seeking legal advice where necessary
 - iii. notifying the College's insurer, should the investigation reveal inappropriate behaviour by a staff member or volunteer that could result in legal action
 - iv. relevant file notes, letters, cautions, warnings that need to be made
 - v. suspension or dismissal of the relevant employee, if warranted
 - vi. relevant counselling for the employee against whom an allegation has been made, and/or the person making the allegation, and/or the alleged victim
 - vii. any other relevant action.

The employee against whom the allegation was made will be advised verbally and/or in writing about the outcome of the investigation and any determined outcomes.

The person making the complaint will also be advised in writing about the substantiation or otherwise of their allegation.
- (i) At the conclusion of the investigation, all records of the investigation will be stored in the College Principal's office and a reference of the investigation will be placed in the staff file.

7. Criminal Offences

In 2018, the Crimes Act was amended to adopt recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The new offences are designed to prevent child abuse and to bring abuse that has already occurred to the attention of the Police.

7.1 Failure to Protect Offence (Crimes Act 1900 – NSW)

Any adult working in an educational institution (therefore all staff members of the College) will be committing an offence if he/she has knowledge of another adult working at that institution who poses a serious risk of committing a child abuse offence - and he/she has the power to reduce or remove that risk, and he/she negligently fails to do so by act and/or omission.

This offence is targeted at those in positions of authority and responsibility who work with children and turn a blind eye to a known and serious risk rather than using their authority or power to protect children.

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7.2 Failure to Report Offence (Crimes Act 1900 – NSW)

Any adult (therefore all staff members at KTC) who knows, or believes or ought to know, that a child abuse offence has been committed – and fails to report that information to the Police (without reasonable excuse) will be committing an offence.

A ‘reasonable excuse’ would include: a situation where the adult has reported the matter to the College Principal and is aware that the College Principal has already reported the matter on to the Police.

7.3 Special Care Relationships (Crimes Act 1900 – NSW)

It is a crime in NSW for a staff member, volunteer or contractor to have a sexual relationship with a student where there is a special care relationship. The Act provides that a young person is under an adult’s special care if the adult is a member of the teaching staff of the College at which the young person is a student; or has an established personal relationship with the young person in connection with the provision of religious, sporting, musical or other instruction.

The Special Care (sexual intercourse) offence under s73 was supplemented by an additional special care offence involving sexual touching now under s73A of the Crimes Act. The new offence under s73A will expand special care offences to also apply to non-penetrative sexual touching. The offence will protect children aged 16-17 years from inappropriate sexual contact with teachers and others who have special care of a child.

8. Policy Access

This policy can be found on the College’s website, under ‘Policies’ and for staff, on the College’s internal drive ‘Staff Common/KTC Policies and Procedures/Policies/ KTC-POL-006 (Child Protection) _r4.

Early Learning can also access the Policy on the “Teachers drive/Pre-school admin/2020/Policies”.

REFERENCES

NSW Department of Communities and Justice (DCJ) <https://www.dcj.nsw.gov.au>

The Office of the Children’s Guardian www.kidsguardian.nsw.gov.au

Department of Premier and Cabinet www.keepthemsafe.nsw.gov.au

With Specific References to Early Learning:

- Child Protection (Working with Children) Act 2012
- Children and Young Person’s (Care and Protection) Act 1998
- ChildStory Reporter website NSW Government (includes Mandatory Reporting Guide)
- Education and Care Services National Law and Regulations

Review

The Policy, including Child Risk Management Strategy, will be reviewed annually and after any disclosure or suspicion of harm being actioned. The review will include checks to ensure the strategy reflects current legislation, continues to be effective, or whether any changes and additional training are required. The review will be conducted by:

- Management
- Employees
- Families
- Interested Parties

Last Reviewed: 23 May 2022

Date for next Review: 23 May 2023

ACKNOWLEDGEMENT

I *[Print name]* _____ have read, understood and agree to comply with the terms of this Child Protection Policy.

I also acknowledge that this policy needs to be considered in relation to the policies listed in 1.4 of this document.

I understand that I can access this policy on the College’s website, under ‘Policies’ and for staff, on the College’s internal ‘Staff Common’ folder.

Signed

Dated

Return to College Principal’s EA.