



EAST PRESTON ISLAMIC COLLEGE

DUTY OF CARE POLICY

April 2023

DUTY OF CARE POLICY

Last Review: July 2023	Constructed / Reviewed by: East Preston Islamic College on advice from Russell Kennedy Lawyers
Next Review: July 2025 (and every two years thereafter in accordance with the College's review cycle, or more frequently as required)	Approval Required: Leadership Team
	Approval Date: April 2023

1 Statement of Context and Purpose

- 1.1 East Preston Islamic College (the **College**) is committed to ensuring the care, safety and welfare of its students. The College has established strategies, practices, policies and procedures to uphold this commitment, and to ensure that it discharges the duty of care it owes to its students.
- 1.2 The College treats seriously all of its legal obligations to create a safe space for its students at all times, and seeks to ensure that its culture is defined by a mentality where protecting students forms part of our everyday thinking and activity.
- 1.3 All policies, protocols and procedures flow from the College's vision:
- To ensure excellence, in both academic and Islamic development, with continuous progress towards producing a new generation of Muslims who are committed, compassionate and hard working citizens, and who are ready to contribute positively and productively to the Australian society.*
- 1.4 The purpose of this policy is to ensure:
- 1.4.1 staff at the College has an understanding of the nature of the legal duties owed by teachers and school staff towards children;
 - 1.4.2 the College complies with its legislative requirements; and
 - 1.4.3 the College has in place strategies to enhance compliance with the Child Safe Standards
- 1.5 This policy sets out the key elements to the College's approach in discharging its duty of care to students. This includes:
- 1.5.1 what "duty of care" means;
 - 1.5.2 the impact of legal liability;
 - 1.5.3 how teaching staff may discharge their duty of care to students; and
 - 1.5.4 the circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

2 Scope

- 2.1 This policy applies to all Board members, employees, volunteers, contractors and other authorised personnel required to perform functions on the College's premises. This policy will refer to all employees, volunteers, contractors and other authorised personnel interchangeably as "staff".

- 2.2 This policy extends to any person who is engaged in student-related work that has direct and regular contact with students.
- 2.3 This policy is not intended to override or form part of the terms of any award or contract that applies to an employee but should be considered a reasonable direction to staff. As such, staff are expected to abide by this policy and report any suspected or known breaches of this policy.

3 Duty of care

- 3.1 The College has a legal duty of care to students while they are involved in College activities, or present for the purposes of being involved in College activities.
- 3.2 This duty extends to taking:
- 3.2.1 Reasonable measures, with regard to all the circumstances, to protect students from risks of harm and injury that should have been reasonably foreseen.
 - 3.2.2 Reasonable care that any student (and other person) on the College's premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the premises.
 - 3.2.3 Reasonable precautions to prevent the abuse of a child by an individual associated with the College while the child is under College's the care, supervision or authority.
- 3.3 This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be reasonably taken.
- 3.4 The fact that a duty of care exists does not of itself mean that the College will be liable for an injury sustained by a student. In order for the College to have been negligent with its duty of care, it must be established that:
- 3.4.1 a duty of care was owed to the person harmed at the time of the injury.
 - 3.4.2 the risk of injury was foreseeable.
 - 3.4.3 the likelihood of the injury occurring was more than insignificant.
 - 3.4.4 there was a breach of the duty of care or a failure to observe a reasonable standard of care.
 - 3.4.5 this breach or failure was a cause of the injury.

4 Duty of care – Teaching staff

- 4.1 Teachers owe a special duty of care toward students.
- 4.2 The standard of care required is that of a 'reasonable' teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes exercising their professional judgment. The duty owed to students is not an absolute duty to ensure that no harm will ever occur, but a duty to take reasonable care to avoid foreseeable harm being suffered.

5 Procedures to assist teachers with discharging their duty of care:

- 5.1 While teachers must always ensure they discharge their duty of care in all circumstances, the College has provided the following guidelines to assist them in doing so.

5.2 General

- 5.2.1 Ensuring students arrive on time to their scheduled timetabled class.
- 5.2.2 Promptly following up unexplained student absences.
- 5.2.3 Arriving on time to scheduled timetabled yard duty responsibilities.
- 5.2.4 Making mandatory reports as required by law.
- 5.2.5 Acting appropriately and in accordance with the College's policies to protect a student who claims to be bullied.
- 5.2.6 Calling out dangerous play.
- 5.2.7 Exercising constant vigilance and planning.
- 5.2.8 Ensuring students are fully and actively supervised at all times during all College activities, including excursions and incursions.
- 5.2.9 Taking appropriate steps to ensure buildings, grounds and equipment are safe and suitable to help prevent injuries to students and other persons.

5.3 Student safety

- 5.3.1 Taking reasonable precautions (including by acting in accordance with the College's student safety policies) to minimise the risk of child abuse by an individual associated with the College.
- 5.3.2 Complying with the College's student safety policies (including the Student Safety and Protection Policy).
- 5.3.3 Reporting actual and suspected concerns of inappropriate conduct (eg. crossing of processional boundaries) in accordance with the College's processes.
- 5.3.4 Complying with mandatory reporting obligations.

5.4 Personal care and toileting:

- 5.4.1 Attending to a sick student, or a student who has had a toileting accident should, where possible, be provided by a teacher's aide.
- 5.4.2 Where possible, teachers should not leave the classroom with the student who is sick or has had the toileting accident.

5.5 Classroom supervision:

- 5.5.1 Teachers must not leave students in the care of ancillary staff, parents or trainee teachers.
- 5.5.2 Teachers must not leave students in the care of external education providers.
- 5.5.3 In an emergency situation, teachers should use the phone to contact their supervisor or the Principal, or otherwise send a teacher's aide to look for assistance.

- 5.5.4 No student should be left unsupervised outside the classroom as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted within the classroom or educational environment under the direct supervision of the teacher.
- 5.6 Movement of students
- 5.6.1 Care needs to be taken in allowing students to leave the room to work in other areas of the school, for example, completing jobs such as collecting or distributing notices.
- 5.6.2 Use of students as monitors outside the room during class time must only occur with the approval of a member of the Principal or their delegate.
- 5.6.3 Discretion is to be used when allowing students to visit the toilet or other areas of the College (eg. Reception) during class time.
- 5.7 Yard supervision:
- 5.7.1 Teachers are required to take positive action to discharge their duty of care while supervising students on yard duty.
- 5.7.2 Teachers should be aware that students are usually less constrained and more prone to accident and injury than in a more closely supervised classroom.
- 5.7.3 Teachers rostered for duty must attend the designated area at the time indicated on the roster.
- 5.7.4 Teachers on duty are to remain in the designated area until the end of the break period or until replaced by the relieving teacher, whichever is applicable.
- 5.7.5 Where a relieving teacher does not arrive for duty, the teacher currently on duty should send a message to the office but must not leave the area until replaced (the handing over of the duty must occur in the designated area).
- 5.7.6 No changes to the yard duty roster are to be made without the approval of the staff timetable or daily organiser.
- 5.7.7 Teachers should always be on the move, alert and highly visible.
- 5.7.8 Teachers must intervene immediately if potentially dangerous behaviour is observed in the yard.
- 5.8 Excursions, incursions, off-site events and activities (collectively referred to as "excursions):
- 5.8.1 Teachers should be aware that students are usually less constrained and more prone to accident and injury while on an excursion, compared to a supervised classroom environment.
- 5.8.2 Teachers should be aware that an incursion with an external provider does not absolve supervision duties of the Teacher, including first aid duties. A teacher must be present at all times and remain the person designated with duty of care responsibilities.
- 5.8.3 Arrangements must be made for students who are not attending an excursion, so that they can continue their normal program at the College (under supervision).

- 5.8.4 Students must be counted on and off transport and at times on a regular basis whilst on an excursion.
- 5.8.5 The Teacher in Charge of the excursion will have copies of all confidential medical forms and information, contact details and permission notes. This information is available via the College's electronic management system, Compass and is made available to the Teacher in Charge and all staff while on the excursion. A copy of this material will also be stored electronically at the College.
- 5.8.6 The Teacher in Charge or designated teacher of an excursion will carry a mobile phone and a first aid kit.
- 5.8.7 If the return time from an excursion is delayed or otherwise varied, the Teacher in Charge will contact the College to inform the Principal (or their delegate) of the new arrival time so that parents can be contacted and a staff member will remain at the College until they arrive.
- 5.8.8 When crossing roads, teachers are to ensure students are using designated crossing points whenever possible.
- 5.8.9 For further information, refer to the College's Camps and Excursions policy.

5.9 Outside the College environment:

- 5.9.1 A teacher's duty of care is not confined to the geographical location of the College.
- 5.9.2 Teachers must ensure they discharge their duty of care in circumstances outside of the College environment when they have assumed the student-teacher relationship.
- 5.9.3 Risks outside the College environment may sometimes require a teacher and the College to take positive and reasonable steps to protect the student from the risk and discharge their duty of care.
- 5.9.4 The steps required to discharge the duty of care owed will depend on the degree of control the College has over the activity. For example, a known bully on a school bus may require the College to suspend or refuse to transport the bully.

6 Standard of care – Non-teaching staff, volunteers & external providers

- 6.1 Non-teaching staff, volunteers (including parent volunteers) and external providers also owe a modified duty of care to protect students from risks of harm that reasonably ought to be foreseen. This duty arises when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or external provider, and accepted by that individual.
- 6.2 For example, a teacher may ask a non-teaching staff member to accompany a student to a different area of the College. While normally this staff member may not owe a standard duty of care to that student, as they have accepted the duty to care for and supervise the student passed from the teacher they now must protect that student from foreseeable risks of harm.
- 6.3 In any case, all staff are required to act in a manner which upholds the College's duty of care.

7 Students' individual circumstances

- 7.1 Individual circumstances will determine what constitutes reasonable care. The following issues may be considered in assessing the reasonableness of the level of care in any particular circumstance:

- 7.1.1 The student's age, experience and capabilities: younger students require more care than mature students.
 - 7.1.2 Physical and intellectual impairment: students with disabilities are exposed to higher levels of risk of injury than students without a disability.
 - 7.1.3 Medical condition: special care must be taken to protect students with known, or ought to be known, medical conditions which expose them to a higher risk of injury (eg. asthma or epilepsy).
 - 7.1.4 Behavioural characteristics: the level of care is increased where students are known to behave in a manner that increases the risk of injury.
 - 7.1.5 Cultural characteristics: the cultural characteristics of students may affect a student's exposure to risk.
 - 7.1.6 The nature of hazards present: increased care is required if the College activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment.
 - 7.1.7 Any conflicting responsibilities the College or teacher may have; and normal practices and procedures within the College.
- 7.2 These factors must be taken into account when planning student activities.

8 Restrictive intervention and seclusion

- 8.1 The College believes that restrictive intervention and seclusion of a student are to be used as a method of last resort. However, at times staff may find it necessary to respond to a student behavioural concern in such a manner where:
- 8.1.1 There is an imminent threat of physical harm or danger to a student and others.
 - 8.1.2 Physical restraint and/or seclusion are reasonable in the circumstances.
 - 8.1.3 There is no less restrictive measure reasonably available in the circumstances.
- 8.2 Restrictive intervention and seclusion of a student must not occur unless the above criteria are met.
- 8.3 In the rare event that a student is restrained, staff must:
- 8.3.1 Use the minimum force required to address the imminent threat of physical harm or danger.
 - 8.3.2 Only restrain the student for the minimum duration required.
 - 8.3.3 Monitor the student for any indicators of distress and immediately cease the restraint should these be identified.
 - 8.3.4 Communicate with the student to make clear why the restraint is being applied.
 - 8.3.5 Ensure that the restraint used is consistent with the student's individual needs and circumstances, including but not limited to the student's age, gender, size, and any additional needs such as behavioural, intellectual, neurological, sensory, medical or communication impairments.

- 8.4 The decision about whether to use restrictive intervention and seclusion rests with the professional judgement of the staff involved, following consideration of their legal and professional obligations.
- 8.5 Staff must immediately document and report all instances of physical restraint or seclusion to a member of the Executive Leadership Team.
- 8.6 For further information regarding restrictive intervention and seclusion please refer to the Child Restraint Policy.

9 Civil liability laws

- 9.1 The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.
- 9.2 These laws limit liability in certain circumstances including, in broad terms:
 - 9.2.1 The College does not owe a duty of care to warn of an "obvious risk".
 - 9.2.2 The College will not be liable for harm suffered as a result of the materialisation of an "inherent risk".
- 9.3 The existence of civil liability laws means that issues of liability for student care claims in Australia will ultimately be determined by a complex mixture of legislation and common law (judge's decisions).

10 Discharging duty of care responsibilities

- 10.1 In discharging duty of care responsibilities, the College and staff must exercise professional judgment to achieve a balance between ensuring that students do not face an unreasonable risk of harm, whilst also encouraging students' independence and maximising learning opportunities.
- 10.2 Non-teaching staff, volunteers and external providers must exercise judgment appropriate in the circumstances.
- 10.3 To assist the College to discharge its safety responsibilities, the College has developed an OHS Procedures Manual and Student Safety Risk Register through which the College identifies potential safety hazards and analyses these in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur.

11 Breach

- 11.1 The College emphasises the need to comply with the requirements of this policy. Any staff found to be in breach of the requirements of this policy may be subject to disciplinary action, up to and including termination of employment (or engagement, where appropriate). Breaches may also result in appropriate authorities and/or the Police being informed.

12 Communication

- 12.1 This policy is available to parents, students and the College community via the College's website.
- 12.2 This policy is available to staff as part of the College's internal policies and procedures, and forms part of the College's induction program for incoming staff. Aspects of (and updates to) the College's student protection policies will be addressed in the College's professional development updates, training programs, bulletins and newsletters.

13 Related documents

Student Safety Framework

Student Safety Risk Register

Occupational Health and Safety Policy

Camps and Excursions Policy