

Duty of Care Policy



Date Approved by Committee of Management: 20/10/2021

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PURPOSE

The purpose of this policy is to communicate to the wider school community the non-delegable duty of care obligations that Beechworth Montessori School has to protect students from risk of harm or injury and to ensure all staff are aware of their legal obligations relating to their individual duty of care.

SCOPE

This policy applies to all students, staff, parents, families and others attending the programs and activities of Beechworth Montessori, including during off-site excursions and activities. The duty of care may, in some circumstances, extend beyond school hours and/or beyond school premises.

POLICY STATEMENT

A duty of care is the moral or legal obligation to take all reasonable steps to ensure the safety and wellbeing of students. Duty of care is a legal concept rather than a law in itself. The concept is embedded throughout laws that govern schools and their employees.

The duty of care is **non-delegable**, meaning that it cannot be assigned to another person or entity.

The duty of care is both an organisational and an individual responsibility. That is:

- the school, as a legal entity, has a duty of care to its students, and
- members of the governing body, teachers, other staff, volunteers and contractors have an individual duty of care to students.

The duty of care must be proportionate to the needs of the student, with the possibility of different and potentially greater precautions being taken for younger students and students with disabilities.

IMPLEMENTATION

1. The school's duty of care

The school has a non-delegable duty of care to protect students from harm, and the school—as an incorporated entity—is capable of being sued if it fails in its duty of care. The school discharges its duty through the leadership, decisions, actions (and omissions) of those designated as responsible persons. The school's duty of care is higher than the duty that applies to teachers.

The duty requires schools to take steps to minimise the risk of foreseeable harm or injury including:

- a) Providing suitable and safe school premises, facilities and equipment
- b) Providing an adequate system of student supervision
- c) Undertaking risk assessments for school activities, events, camps and excursions
- d) Implementing bullying prevention and response strategies to reduce psychological injuries to students
- e) Monitoring specific students where there are known behavioural risks
- f) Implementing strategies to reduce physical injuries to students
- g) Educating students about their own physical and psychological safety
- h) Ensuring that appropriate medical assistance is provided to sick or injured students
- i) Ensuring that the school complies with its mandatory reporting obligations and Ministerial Order No. 870 – Child Safe Standards
- j) Managing employee recruitment, conduct and performance
- k) Responding to accidents and taking appropriate steps to follow up any incidents and emergencies

This list is not exhaustive.

2. The school's duty of care in relation to the prevention of child abuse

Schools have an organisational duty of care to prevent child abuse. If an allegation of child abuse is made, it is not sufficient for the school to prove there was no negligence or misconduct on the part of the school. The school must be able to demonstrate it was active in taking reasonable steps to protect the student from harm.

3. A teacher's duty of care

- a) The standard of care required of a teacher is greater than that expected of a parent or guardian, given that a teacher is a trained professional educationalist. The law expects a teacher to act as an 'ordinary, reasonable' educator rather than a 'good and careful' parent or guardian.
- b) The teacher–student relationship is different from a passer-by relationship. A teacher owes a student a positive duty of care, meaning teachers are required to take steps or actions to protect students from harm, both from themselves and others, whenever and wherever the teacher–student relationship exists.
- c) Each teacher has an individual non-delegable duty of care to protect students from risk of harm or injury. Individual teachers can be sued if they fail in their duty of care as a result of their negligence.
- d) The principal is responsible for making and administering such arrangements for supervision as are necessary according to the circumstances and teachers are responsible for carrying out their assigned supervisory duties in such a way that students are, as far as can be reasonably expected, protected from injury. This requires not only protection from known hazards, but also protection from those that could arise (that is, those that the teacher should reasonably have foreseen) and against which preventive measures could be taken.

- e) If a teacher breaches their duty of care, the school may be required to notify the Victorian Institute of Teaching (VIT). The VIT may then decide to investigate the matter and, in appropriate circumstances, the VIT may take disciplinary action, including:
- Cautioning or reprimanding the teacher
 - Imposing conditions on the teacher's registration
 - Suspending or cancelling the teacher's registration
 - Disqualifying the teacher from applying for registration for a period.
- f) Within a school, the duty of care to an individual student is shared amongst teachers with potentially each having a different part to play.

4. The duty of care required by non-teaching staff, visitors, contractors, volunteers and external providers

Other adults in the school—including visitors, contractors and volunteers— also have a responsibility to take reasonable care to protect students from risk of harm or injury.

5. Elements of duty of care

The concept of a 'duty of care' has several elements as follows:

a) Reasonableness

Schools must ensure reasonable steps are taken to prevent harm or injury to students. The word 'reasonable' is not defined and is, in the end, a judgment made about the risk of harm. This judgment may be made by conducting a formal or informal risk assessment, which should be documented.

Schools and teachers should assess the risks of taking particular actions or not taking particular actions. They should consider:

- the cost, difficulty or social impact of taking a particular action
For example, the social impact of minute-by-minute close supervision, whilst designed to reduce the likelihood of injury, could be considered overly protective.
- the extent to which a duty of care for one group of students conflicts with a duty of care to another group of students
- how the benefits of the activity or situation are balanced with the risk of the activity being harmful
For example, a school may consider that the benefit of a water sports activity outweighs the risk of injury to a student.
- the potential seriousness of the harm that could occur
- the vulnerability of the student(s), for example, in relation to age, cultural background or students with a disability
- whether or not it is likely that harm will occur if a different action—or no action—is taken
- whether or not the harm might be foreseen.

b) Foreseeability

The duty of care only applies to harm or injury which is reasonably foreseeable. Harm is reasonably foreseeable when an ordinary person in the same situation could anticipate the same risk in the circumstances.

c) Proportionality

The standard of care is proportional to the risks involved. A higher standard applies when caring for very young students or students with disabilities.

d) Commission and omission

The duty of care may be breached either by a direct act or by a failure to act.

a) Significant harm or injury

The extent to which the duty of care has been breached will depend on whether the harm or injury is judged by the court to be significant or not.

6. Legal background

a) 'Duty of care' is an element of the tort of negligence. In broad terms, the legal position is that if a person is injured as a result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

b) To successfully bring a compensation claim in negligence, a person must establish on the balance of probabilities, that:

- a duty of care was owed to them at the time of the injury
- the risk of injury was reasonably foreseeable
- the likelihood of the injury occurring was more than insignificant
- there was a breach of the duty of care or a failure to observe a reasonable standard of care; and
- this breach or failure caused or contributed to the injury, loss or damage suffered

c) The fact that a duty of care exists does not mean that a school staff member will be liable for every injury sustained by a student. In order for the student to succeed in a negligence claim, all of the above elements must be established.

RELEVANT LEGISLATION

- Care, safety and welfare of students: *Education and Training Reform Regulations 2017 (Vic)* sch 4 cl 12
- Organisational duty of care and liability for child abuse: *Wrongs Act 1958 (Vic)* Pt XIII
- National Quality Standards QA2
 - 2.3.1 Children are adequately supervised at all times.
 - 2.3.2 Every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
 - 2.3.3 Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
 - 2.3.4 Educators, co-ordinators and educators are aware of their roles and responsibilities to respond to every child at risk of abuse or neglect.

RELATED POLICIES

- Risk Management Policy
- Child Safe Environment Policy
- Bullying Prevention and Response Policy
- Supervision of Students Policy
- Excursions, Incursions and Camps Policy