

Duty of Care Guidelines

Purpose

MACS Specialist Schools Ltd (MACSS) in partnership with parents, guardians and caregivers, who are the primary educators of their children, is entrusted with the holistic education of each child in our schools. All staff therefore have a duty of care to students to take reasonable care to avoid acts or omissions that they can reasonably foresee would be likely to result in harm or injury to the student, and to work for the positive wellbeing of each child. The *Education Training and Reform Regulations 2017* (Vic.) (sch 4 cl 12) require that schools must ensure that the care, safety and welfare of all students attending the school is in accordance with any applicable state or Commonwealth laws, and that all staff are advised of their legal obligations under those laws.

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

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
- this breach or failure caused or contributed to the injury, loss or damage suffered.

The fact that a duty of care exists does not mean that a school will be liable for an injury sustained by a student or other person. In order to succeed in a negligence claim, all of these elements must be established.

Scope

Duty of care applies to all sites under the control of the school and applies to all members of the school's leadership team, teaching and non-teaching staff members, casual relief teachers, religious and parish staff, volunteers and contractors engaged by the school.

Duty of care is a matter for the whole organization. It is not just confined to the geographical area of St Mary's College and the partner school, but also to school activities that occur outside the school where a student is acting on a staff member's instructions. The duty also applies to situations both before and after school where students can be assumed to be under the teacher's care. Consideration must be given to the age and capacity of children in care with greater attention required for younger students or students with disabilities. St Mary's College also takes into account that students are likely to experience barriers specific to their hearing loss and language development.

Teaching and non-teaching staff members owe a duty of care to students within their care, and, but not limited to, parents, student teachers, volunteers, visitors or contractors who may sustain injury, loss or damage as a result of our conduct.

The school owes a duty to take reasonable care that any student (or other person) on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done to the premises.

Principals and teachers are held to a high standard of care in relation to students that is non-delegable. The duty requires principals and teachers to take reasonable steps to minimise the risk of reasonably foreseeable harm from injury or child abuse to students by an individual associated with the school whilst the child is under the care, supervision or authority of the school.

Whenever a teacher-student relationship exists, teachers have a special duty of care. Generally, teachers are expected to take such measures as are reasonable in the circumstances to protect a student under their charge from reasonably foreseeable risks of injury or child abuse.

Duty of care is non-delegable, meaning that it cannot be assigned to another party.

St Mary's College is unique as it operates in partnership within a host school. To discharge the duty of care, the staff of both schools take on reasonable obligations beyond their own duty of care, in accordance with the Campus Collaboration Agreement. At least annually, St Mary's College meets with the partner school to discuss and clarify these arrangements which are communicated to the staff of both schools via their usual channels such as staff meetings and operational guidelines.

Definitions

Duty of care is a legal obligation that requires schools to take reasonable steps to reduce the risk of reasonably foreseeable harm, which can include personal injury (physical or psychological) or damage to property. The reasonable steps that our school may decide to take in response to a potential risk or hazard will depend on the circumstances of the risk.

Principles

In having a duty of care to students, MACSS schools will, in consultation and collaboration with each partner school:

- ensure compliance with the Child Safe Standards
- provide suitable and safe premises
- provide an adequate system of supervision at St Mary's College and the partner school
- implement strategies to prevent bullying which are aligned with those of the partner school
- ensure that medical assistance is provided to a sick or injured student
- consider if different or greater measures are needed to satisfy the duty of care for students who are deaf or hard of hearing
- ensure that student diversity and the principle of inclusiveness are taken into account
- manage employee recruitment, conduct and performance.

Policy

Each MACSS school has policies and procedures to manage common risks in the school environment of St Mary's College and the broader school environment of the partner school, including:

- bullying prevention and intervention
- camps and excursions
- child safe standards
- codes of conduct for parents, students and staff
- emergency management
- employment and management of staff
- health and first aid policies
- mandatory reporting
- occupational health and safety
- student wellbeing and engagement
- supervision of students in class and in the school yard.

The principal and school leaders in MACSS schools have the responsibility for ensuring that all staff, as well as support personnel, are familiar with the Duty of Care Guidelines and the implementation of relevant policies.

All staff and relevant personnel have signed a code of conduct in relation to child safety.

Parents are advised of MACSS policies regarding supervision of students, including times for before school and after school supervision, through school communication. Reminders are issued at regular intervals. School staff, parents, carers and students are encouraged to speak to the principal to raise any concerns about risks, hazards or duty of care obligations.