

Duty of Care Policy

Rationale

Principals and teachers are held to a high standard of care in relation to students. St Malachy's and its teachers have a duty to take or exercise 'reasonable care' to protect students from risks of harm that are 'reasonably foreseeable' whilst they are involved in school activities, or are present for the purposes of a school activity. The standard of care required of schools and teachers is higher than would be expected of parents, and the duty of care is a special duty which goes beyond the ordinary duty in negligence. It is a special relationship due to the vulnerability of students and requires teachers to act positively to insure against the risk of injury which includes protecting students from harm caused by themselves or another source. St Malachy's and its teachers must also maintain other duties imposed by legislation including:

- reasonable care for the health and safety of employees and others in the workplace (for the purposes of work, health and safety laws, students are considered 'others')
- mandatory notification of suspected or actual child abuse
- duty to prevent discrimination and harassment of students
- contract obligations to parents upon enrolment of students

Accordingly, schools and teachers must:

- ensure reporting obligations under child safety legislation including requirements of Ministerial Order 870 Child Safe Standards are met
- ensure reasonable measures are taken to minimise risk of injury, including risk of child abuse;
- provide suitable and safe premises for learning;
- provide adequate supervision in all aspects of schooling;
- implement strategies to prevent bullying (including cyberbullying) and harassment;
- ensure that medical assistance or care is provided to a sick or injured student;
- ensure the safety and wellbeing of students in an emergency or critical incident;
- manage employee recruitment, conduct and performance.

Background

The St Malachy's provides effective student supervision and has policies and procedures in place to ensure that students are in a safe environment at all times. **Duty of care** is a legal concept that has its origins in the common law. The common law is a collection of legal principles that have been established over time by the courts. The duty of care principle not only underpins, but to a large extent drives, most school policies and practices. This policy attempts to explain, in plain English, what "duty of care" means, how teaching staff may discharge their duty of care to students, and the

circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

Definitions

Duty of care: is the responsibility that principals and teachers have in relation to their students to take steps that are reasonable in the circumstances to protect students from risks of injury that should reasonably have been foreseen. The duty is not to prevent injury in all circumstances. It is a duty to take reasonable steps to prevent injury, which is known or foreseeable. The question of what are reasonable steps will depend on the individual circumstances of the case, and consideration of the following factors:

- ensure reporting obligations under child safety legislation including requirements of Ministerial Order 870 Child Safe Standards are met
- the probability that the harm would occur if care were not taken;
- the likely seriousness of the harm;
- the burden of taking precautions to avoid the risk of harm;
- the social utility of the activity that creates the risk of harm;
- the duty may, in some circumstances, extend outside school hours and outside the school premises. This will depend on whether the relationship between staff and student extends to the individual circumstances, whether the risk was known or foreseeable, and whether there were any reasonable steps that could be taken to prevent the injury from occurring. The duty is non-delegable, meaning that it cannot be assigned to another party.

(Refer to the CECV School Operations Guide)

Supervision: is the supervisory role of staff aimed at enhancing a student's educational opportunities, building self-esteem, and ensuring students are safe and supported. Whilst in a supervisory role, each staff member has an obligation to fulfil duty of care requirements. Staff must comply with the arrangements for student supervision put in place by the school for all activities where the student is under the duty of care of a member of the staff.

School environment: is any physical or virtual place made available or authorised by the school governing authority for use by a child during or outside school hours, including:

- a campus of the school;
- online school environments (including email and intranet systems); and
- other locations provided by the school for a child's use (including, without limitation, locations used for school camps, sporting events, excursions, competitions, and other events).

Principles

- Learning within a safe environment plays an important role in student outcomes and sense of wellbeing.
- Principal and teachers must take reasonable steps to ensure the safety of student and others within the school environment.
- Clear procedures and processes that are consistently applied are important in ensuring high standards of duty of care at all times.

- The principal is responsible for ensuring that there is a well organised and responsive system of supervision and yard duty in place during school hours, before and after school, and on school excursions and camps.
- Teachers are required to supervise all learning environments; the school grounds, the classroom and excursions - online spaces are also considered a learning environment. Therefore, as part of that duty teachers are required to adequately supervise students who are working in these spaces. This duty also requires protection from risks that could arise (that is, those that the teacher should reasonably have foreseen) and against which preventive measures could be taken.
- The **St Malachy's will comply with all legislative requirements underpinning child safety** including Ministerial Order 870 - Child Safe Standards – Managing the risk of child abuse in schools, including reasonable precautions to prevent the abuse of a child by an individual associated with the school while the student is under the care, supervision or authority of the school.
- Effective strategies that ensure the safety and care of all students are implemented. This includes appropriate measures for younger students, students with disabilities or students at risk.
- All staff have a responsibility to take reasonable steps to prevent potential injury to students and others.
- Strategies are implemented, as required, for specific students such as students with disabilities and age levels to ensure that the environment is safe for all students.
- Schools are required to implement all procedures as outlined in the Procedures document.

Policy Statement

Principals and teachers have a legal duty to take reasonable steps to protect students in their charge from risks of injury that are reasonably foreseeable. All St Malachy's staff will be made aware of their legal responsibilities. St Malachy's principal is required to plan, implement and monitor and report on arrangements for student care, safety and wellbeing in addition to his/her professional teaching obligations.

St Malachy's recognises:

- that it owes all students a duty of care to take reasonable measures to protect them from reasonably foreseeable risks of injury;
- that it owes a duty to take reasonable care that any student (and other persons) 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;
- that it owes a duty to take reasonable precautions to prevent the abuse of a child by an individual associated with the organisation while the child is under the care, supervision or authority of the organisation;
- that different and sometimes greater measures may need to be taken for younger students or students with disabilities and other vulnerabilities in order to discharge this duty of care;

- that as part of their professional obligation, all staff of St Malachy's have a legal duty to take steps to protect students in their charge from risks of injury or child abuse that are reasonably foreseeable.

All staff in St Malachy's are cautioned against giving advice on matters that they are not professionally competent to give (negligent advice). Negligent advice could constitute a breach in duty of care. Advice is to be limited to areas within one's own professional competence and given in situations arising from a role specified for them by the nature of their employment.

Relevant Legislation

- Ministerial Order No 870 – Child Safe Standards – Managing the risk of child abuse in schools
- *Child Wellbeing and Safety Act 2005* (Vic)
- *Disability Discrimination Act 1992*

Key related documents

- DOBCEL Pastoral Care and Wellbeing Guidelines
- DOBCEL Safeguarding Children and Young People: Code of Conduct
- DOBCEL Anaphylaxis Policy
- DOBCEL Attendance Monitoring Policy and Procedures
- DOBCEL Anti Bullying and Harassment Policy
- DOBCEL Behaviour Management Policy and Procedures
- DOBCEL Digital Technology Policy
- DOBCEL Critical Incident Plan
- School Emergency Management Plan
- CECV Child Safety Commitment Statement
- Department of Education and Training (DET) Safety Guidelines for Education Outdoors
<http://www.education.vic.gov.au/school/teachers/studentmanagement/excursions/Pages/outdoorguidelines.aspx>