

# Student Duty of Care Policy

*This policy is compatible and compliant with The Brotherhood of St Laurence – High Street Centre Frankston, Victorian Registration and Qualifications Authority (VRQA) and the broader Brotherhood of St Laurence policies.*

## **Policy Background and Purpose**

Duty of care is a legal concept that has its origins in the common law principle of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence. The fact that a duty of care exists does not mean that the David Scott School will be liable for an injury sustained by a student. In order for the student to succeed in a negligence claim, all of these elements must be established.

Student duty of care not only underpins, but to a large extent drives, many of David Scott School's policies and practices.

This Policy attempts to explain, in plain English:

- what “duty of care” owed to students means
- the impact of civil liability laws
- how teaching staff may discharge their duty of care to students
- the circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

## **Policy Objectives**

The school provides a safe working environment for students and staff.

## **Scope**

The application of the policy is relevant to the governing board, principal, school staff, students and parents.

## **Source of Obligation**

The Victorian Registration Standards (sch 4 cl 12) require that the School must ensure that the care, safety and welfare of all students attending the School is in accordance with any applicable State and Commonwealth laws, and that all staff are advised of their legal obligations under those laws.

Under the Guidelines the School is required to provide evidence in the form of the School's policies and procedures with respect to the duty of care owed to students.

## **Duty of Care Owed to Students**

Principals, teachers and education support staff are held to a high standard of care in relation to students. The duty requires Principals, teachers and education support staff to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- ensuring the David Scott School complies with the seven Child Safe Standards
- provision of suitable and safe premises
- provision of an adequate system of supervision
- implementation of strategies to prevent bullying

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- ensuring that medical assistance is provided to a sick or injured student
- managing employee recruitment, conduct and performance

The duty is non-delegable, meaning that it cannot be assigned to another party. Whenever a teacher-student relationship exists, teachers have a special duty of care. 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.

The important issue in all cases will be what precautions the David Scott School could reasonably be expected to have taken to prevent the injury from occurring.

This will involve consideration of the following factors:

- identifying the risk of harm
- 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.

## **Responsibilities Outside of David Scott School**

The law has established that, in some circumstances, the David Scott School's duty (and therefore the Department's duty) will extend beyond the David Scott School hours and outside of the David Scott School grounds. The duty will be extended to outside the David Scott School hours and premises when the relationship between the David Scott School and the student requires it in the particular circumstances. For example, in some circumstances the David Scott School may be liable for injury sustained by students in the grounds before the school begins for the day, particularly if it occurs during the period of time for which the David Scott School yard is supervised.

Whether the duty extends outside of the David Scott School grounds therefore depends on all the circumstances of each individual case, and the David Scott School's knowledge of any dangers.

It is important that the David Scott School clearly inform parents when supervision will be provided and that no formal supervision at the school occurs outside those hours. Similarly, some risks outside of David Scott School will involve informing parents of bus arrangements and leaving it to parents to make appropriate arrangements for transporting their children to and from the David Scott School.

There will be other situations in which the David Scott School will be under a duty to take reasonable steps to avoid injury.

## **Responsibilities Inside the David Scott School**

### Student Supervision

Students are supervised during the David Scott School hours, breaks for recess and lunch and on camps and excursions. Teachers must not leave the classroom unattended at any time during a lesson.

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Care needs to be taken in allowing students to leave the room to work in other areas of the David Scott School. While students are generally free to move around the buildings and work independently in break out spaces, they must be under staff supervision at all times. Discretion is to be used when allowing students to visit the toilet during class time.

On an excursion and teachers must have line of sight at all times, unless prearranged with the Principal and parents/guardians/carers.

If a staff member or student is involved in or witnesses any event that endangers the health and safety of staff, students or visitors during the David Scott School hours or on a camp or excursion, they should refer the Incident to the Principal or member of the Leadership team.

## Break time supervision

Break time supervision is an essential element of staff members' duty of care. It is understood that students are usually less constrained and more prone to accident and injury than in a more closely supervised classroom.

Staff members rostered for yard duty are to attend the designated area at the time indicated on the roster. They are to remain in the designated area until the end of the break period or until replaced by the relieving staff member whichever is applicable. Where a relieving staff member does not arrive for yard duty, the staff member currently on yard duty should send a message to the office, but not leave the area until replaced.

Students are authorised to leave the premises during breaks ONLY upon receiving written consent from parents, guardians or carers. If they do leave the site, they will be unsupervised. Parents, carers and students are advised of this during the enrolment process prior to a student's commencement at the David Scott School.

## **Students' Individual Circumstances**

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:

- the student's age, experience and capabilities: younger students require more care than mature students
- physical and intellectual impairment: students with disabilities are exposed to higher levels of risk of injury than students without a disability
- 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 (e.g. asthma or epilepsy)
- behavioural characteristics: the level of care is increased where students are known to behave in a manner that increases the risk of injury
- the nature of hazards present: increased care is required if the School activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment
- any conflicting responsibilities the School or teacher may have

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- normal practices and procedures within the School.

These factors should be taken into account when planning student activities.

## **Civil Liability Laws**

The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.

These laws limit liability in certain circumstances including, in broad terms:

- the School does not owe a duty of care to warn of an “obvious risk”
- the School will not be liable for harm suffered as a result of the materialisation of an “inherent risk”.

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).

## **Negligent Advice**

Staff are frequently called upon to advise students. When doing so all staff should:

limit their advice to students to areas within their own professional competence and given in situations arising from a role specified for them by the Principal;

ensure that the advice they give is correct and in line with the most recent available statements from institutions or employers. Careers staff should keep contemporaneous notes of advice given to individuals.

## **Discharging Duty of Care Responsibilities- Our Risk Based Approach**

In discharging duty of care responsibilities, the School and teaching staff must exercise professional judgment to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students’ independence and maximising learning opportunities.

Non-teaching staff, volunteers and external providers must exercise judgment appropriate in the circumstances.

To assist the School to discharge its safety responsibilities, Brotherhood of St Laurence has developed an Occupational Health & Safety Program through which we identify potential safety hazards and analyse them in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur. A similar risk based approach is taken with respect to Student Duty of Care, with the definitions of likelihood and consequences together with the Risk Matrix used in our Occupational Health & Safety Program, for the purpose of assessing student safety risks.

Against each identified student safety hazard, it is the School’s policy to develop risk controls and/or treatment plans. Risk controls often take the form of documented policies that are made available to all school staff

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through the School's PolicyPlus site. All policies relating to student safety are set out under the Student Duty of Care menu on our PolicyPlus site.

It is important that all staff consistently enforce School rules and safety policies, and actively engage in ensuring the physical and emotional wellbeing of students.

**Child Safety**

Our duty of care responsibilities are also discharged through the implementation of the policies, procedures and strategies in our Child Protection Program. For more information refer to Creating and Maintaining Child Safe Environments.

**Related Documents**

For further information about the School's Student Duty of Care Program refer to our suite of Student Duty of Care policies.

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## Policy Changes

Date	Reason for Change	Made by