

# Duty of Care Policy –Safe & Supportive Environment



*The NESA Registered and Accredited Individual Non-Government Schools (NSW) Manual requires that a school must have in place policies and procedures to ensure that it provides a 'safe and supportive environment' for all students*

## **Rationale:**

In Australia, a person owes a duty of care to others to not cause injury as a result of their negligent act or omission. The law imposes a special duty on relationships between a school and its pupils. A school has a duty to ensure that reasonable steps are taken to prevent harm to students.

The Farmhouse Montessori School wishes to promote a learning environment where teachers and pupils should be mutually supportive. Students and teachers should respect each other and not engage in conduct which undermines this mutual trust and support. They should also respect the philosophy and ethics of the School. The Farmhouse Montessori School encourages consultation between all members of the school community in matters which affect them.

## **Aim:**

The school will take all reasonable steps to prevent the children being harmed and staff are kept informed of their duty of care towards children enrolled in the Farmhouse Montessori School.

## **Implementation:**

While students are on school premises, school authorities and teachers owe students a duty of care of general supervision concerning their physical safety.

The Civil Liability Act 2002 ('Civil Liability Act') applies in relation to any claim for damages for personal injury, death, damage to property or economic loss resulting from negligence. The Civil Liability Act provides that a person is not negligent in failing to take precautions against a risk of harm unless:

- (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
- (b) the risk was not insignificant; and
- (c) in the circumstances, a reasonable person in the same position would have taken those precautions.

However, the law also imposes a special duty on certain categories of relationships, giving rise to more onerous duties. The relationship between The Farmhouse Montessori School and its pupils is one such relationship. The school has a duty to ensure that reasonable steps are taken to prevent harm to students. This is a positive duty - that is, it requires that positive steps be taken.

This does not mean that the school is under an obligation to ensure that its pupils never suffer injury, but that the school must take reasonable steps to prevent the children being harmed.

While students are on school premises, school authorities and teachers owe students a duty of care of general supervision concerning their physical safety.

Schools owe students on excursion a duty of care. As a school's duty of care is non-delegable, a school does not discharge its duty of care by placing students in the control of an excursion provider. However, this does not mean that a school can never permit its students to participate in excursions operated by others. Rather, a school must be vigilant to ensure that excursion providers with whom it deals are competent and safe.

School bullying has been recognised as a serious problem in schools in Australia. In addition bullying is becoming an increasingly important public policy issue, following concern about the negative effects of

bullying on pupils' academic attainment and emotional wellbeing. The duty of the school extends to protecting a student from the conduct of other students or strangers and from the student's own conduct. See Anti Bullying Policy

To date, there has been no decision in Australia concerning the liability of a school for bullying by students. However, the problem of bullying is now well enough recognised for it to be reasonable to expect all schools to:

- (a) have policies and practices in place to deal with bullying; and
- (b) ensure that these policies are put into practice.

A school owes a duty of care to an employed member of professional staff including to protect them from the dangerous behaviour of students. An employer's duty to its employees, like a school authority's duty to its students, is non-delegable.

A school owes a duty of care to third parties in and around the school grounds or other areas where school activities take place to take reasonable care to ensure that students do not cause harm to third parties.

The provisions of the Civil Liability Act mean that:

- (a) a school does not owe a duty of care to warn another person of an obvious risk (being a risk that in the circumstances would have been obvious to a reasonable person in the position of the injured person even if it has a low probability of occurring); and
- (b) a school is not liable for harm suffered as a result of the materialisation of an 'inherent risk' (being a risk that cannot be avoided by the exercise of reasonable care and skill).

The Farmhouse Montessori School can be in breach of its duty of care by failing to allocate resources to, for example, the engagement of sufficient staff, training and maintenance of equipment.

The Farmhouse Montessori School will not be liable in negligence for harm suffered by another person as a result of the materialisation of an obvious risk of a dangerous recreational activity engaged in by the person. This principle applies whether or not the person was aware of the risk. A 'dangerous recreational activity' means a recreational activity that involves a significant risk of physical harm.

**Creating a safe environment: Schools and teachers should be meticulous about ensuring that the school environment is a safe and danger-free one.**

*The Farmhouse Montessori School implements measures designed to promote the safety and wellbeing of students, particularly having regard to its professional judgement as to what is required and includes in its consideration such matters as:*

School grounds and buildings should be properly maintained, safety-checked regularly, and be free of spillages and dangerous toys.

Dangerous toys and implements should be discouraged and confiscated if found to be present.

Dangerous chemicals should be clearly labelled and locked away.

**Supervision:** Children should be supervised as continually as possible. Teachers must be competent (particularly in relation to science and physical educational activities) and must provide appropriate supervision of pupils. Any safety manuals or guidelines should be carefully followed.

Appropriate measures are taken by School staff to seek to ensure that all students are adequately cared for and supervised while undertaking both on-site and off-site activities, bearing in mind the type of activities and age of the students involved. The Principal is responsible for monitoring these staffing numbers at all times.

Insurance: Even with the best preventative measures, injuries may happen. It is not possible to prevent claims, but adequate insurance will ensure that the interests of the school, the teachers and its pupils are protected.

Conduct:

The School has in place a Code of Conduct for staff which may be supplemented from time to time by specific rules and directives. The Code of Conduct includes such matters as:

- (a) the rights and responsibilities of staff within the School community.
- (b) behaviour management.
- (c) the management and reporting of serious incidents.

This code of conduct is signed by all staff on commencement at the school and filed in the office in the staff member's personal file. The code of conduct is reviewed every two years or when required by the Principal.

Communication: In order to take advantage of the provisions of the Civil Liability Act, schools should share information with one another as to the approaches adopted to manage the risks facing pupils. This information could assist a school in establishing that there was no breach of its professional duty. The School provides both formal and informal mechanisms to facilitate communication between those with an interest in the student's education and wellbeing. This may include communications between some or all of the following: student; parent or guardian or other significant family member of the student; teacher; counsellor; Principal; representative or an appropriate government, welfare, health or other authority. The Farmhouse Montessori School has multiple ways of communicating with families at the school on a daily basis from emails to notices on the front doors at both campuses.

Risk warnings: Where appropriate, The Farmhouse Montessori School should issue risk warnings in relation to recreational activities engaged in by students. (This is monitored by the staff on playground duty at all times then reported to the authorised supervisor on duty or the Principal)

Instruction: Students should be clearly and regularly warned not to engage in specified behaviour which is considered to be dangerous or risky. (This is monitored by the staff on playground duty at all times then reported to the authorised supervisor on duty or the principal)

Complaints and Grievances: The School has in place processes for dealing with complaints and grievances raised by students and/or parents. These processes will incorporate, as appropriate, principles of procedural fairness. See Policies- Grievance Staff & Grievances Families.

The following statement of professional responsibilities must be adhered to by all teachers. In carrying out your duties and responsibilities you must:

- be conscious of your special duty of care to the students of the NSW public education system in all educational activities in and out of school;
- demonstrate the highest standards of professional behaviour, exercise professional judgement and act in a courteous and sensitive manner when interacting with students, parents or caregivers, staff and the public;
- collaborate in the development of school plans, policies, and programs;
- devise and document teaching and learning programs and develop and implement appropriate evaluation mechanisms;
- be conscious of the need for equitable treatment of all students, including those with disabilities or other special needs; meet the individual learning needs of students and assist each student to maximise his or her learning outcomes;
- effectively manage and implement programs for child protection and student welfare;
- undertake appropriate ongoing professional development to promote competence in curriculum development, delivery and evaluation, classroom management and teaching skills;
- comply with legislative and industrial requirements and the Department's Code of Conduct, policies and procedures;

- be familiar with the provisions of legislation relevant to your official responsibilities;
- comply with reasonable directions given by a supervisor/principal and adhere to the official guidelines concerning the performance of your duties;
- implement the priorities of the Department and the school and ensure your professional actions reflect Government policy and departmental procedures and guidelines;
- be fair in exercising delegated responsibility and promote personal and professional development of staff;
- perform your duties efficiently and effectively and with honesty, integrity and fairness at all times;
- ensure that decisions are made fairly and conveyed promptly both within the Department and to those students and members of the public who have a right to know;
- use information gained in the course of employment only for proper and appropriate purpose;
- use public resources economically;
- except in the discharge of official duties use no information gained by or conveyed to you in the course of those duties;
- without the express direction or permission of the Minister or the Director-General, not disclose (whether directly or indirectly) any such information;
- behave in such a manner as to protect and enhance the esteem and standing of public education. In particular:
  - you must not, under any circumstances, have sexual relationships with students. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non consensual or condoned by parents or caregivers. The age of the students or staff member involved is also irrelevant;
  - you must not, under any circumstances, engage in conduct of a sexual nature with a student. Improper conduct of a sexual nature by a teacher against a student includes sexual intercourse and any other form of child sexual abuse (which must be notified) as well as but not limited to: inappropriate conversations of a sexual nature; obscene language of a sexual nature; suggestive remarks or actions; jokes of a sexual nature; obscene gestures; unwarranted and inappropriate touching; sexual exhibitionism; personal correspondence with students in respect of the teacher's sexual feelings for the student; and deliberate exposure of students to sexual behaviour of others, other than in the case of prescribed curriculum material in which sexual themes are contextual;
  - prescribed medications and non prescribed medications (such as analgesics) should only be administered in accordance with departmental guidelines. You must not give students alcohol or other drugs, or encourage or condone the use of alcohol or other drugs by students;
  - teachers must not, under any circumstances, use any form of discipline that includes any threat of physical violence or harm, corporal punishment or engage in any form of behaviour which could cause physical, emotional or psychological harm of any kind to students.

The profession of teaching necessarily brings teachers into close contact with children and young people. Effective teaching is based on warm, mutually respectful relationships between teachers and students.

With a growing awareness that abuse of children can occur in all areas of the lives of children and young people, parents and carers are increasingly vigilant. Having their behaviour under increased scrutiny is a professional challenge for teachers. It is important to remember that the privilege and many benefits associated with employment in a role that involves work with children also carries with it expectations of the highest standards of care and protection for them. Processes are in place to ensure that the rights of staff are protected and that procedures are fair in the investigation of any concerns raised about staff behaviour. There have been occasions, for example, when teachers' actions have been misinterpreted.

Child protection legislation and departmental policies provide a framework for professional relationships of teachers with students (refer to child protection policies). Appropriate teacher behaviour needs to be responsive to the age of the student and the particular teaching context. The principal of The Farmhouse Montessori School will advise you of any local school guidelines and you should not hesitate to raise any concerns with your supervisor or the Principal. Staff at regional office such as the student welfare consultant and staff support officer can also assist.

## A Guide for Teaching and Protecting Children and Young People

The following information will help teachers identify appropriate professional practice in their conduct with students. The material below is not exhaustive but is provided as a guide to common situations.

### Good or acceptable practice

#### 1. School and classroom culture

- Develop school and classroom routines or structures that have clear boundaries of acceptable and professional student/teacher interaction;
- Implement Department and school guidelines that help prepare and plan such educational activities as excursions. Professional behaviour and supervision levels need to respond to the age of students and the educational context;
- Know the school's student welfare and discipline policies and use behaviour reinforcement strategies that follow these policies;
- Develop a non-confrontational behaviour management style;
- Respond to provocative behaviour by students, parents or members of the school community in a non-confrontational, calm manner to help defuse difficult situations. Seek support from colleagues or supervisors where needed. In extreme situations the principal can call police to protect staff and students. Strategies including the use of the Enclosed Lands Protection Act 1901 and obtaining Apprehended Violence Protection Orders can also be used.

#### 2. Care and discipline of children

- Report and document incidents involving physical restraint of students or violence involving students. This provides important information if an allegation is made about the related conduct of a staff member;
- Actively supervise students when on playground duty;
- Clearly instruct and carefully supervise students operating equipment;
- Provide correctional feedback on student work in a constructive way;
- When confiscating personal items, such as mobile phones or hats, ask students to hand them to you. Only take items directly from students in circumstances where concern exists for the safety of the student or others and your own safety is not jeopardised by this action;
- When playing physical sport with children, consider the physiques of students, along with the relative ages and stages of development of all participants.

#### 3. Teacher-student relationships

- Participate in social contact with a student only after obtaining informed consent of the student and the parent (and principal where appropriate); such contact includes meetings, sporting events, phone calls or electronic communications, e.g., emails and text messages;
- When acting as a student's mentor, develop a relationship with clear professional boundaries that cannot be misinterpreted as a personal, rather than a professional, interest in the student;
- If a student develops a 'crush' on you, inform a supervisor, so independent, sensitive advice and support are available;
- Praise and recognise all students when appropriate, so they all feel fairly treated;
- Physically contact students in a way that makes them comfortable, e.g., shaking hands, a congratulatory pat on the back, or with very young students by gently guiding them or holding their hand for reassurance or encouragement;
- When students, particularly very young children, are hurt and seek comfort, it is appropriate to provide reassurance by putting an arm around them;
- Be alert to cues from students about how comfortable they are in your proximity and respect individual needs for personal space. If teachers physically contact students in class demonstrations, such as PE or drama lessons, explain the activity involved and what you will do;
- Be aware of cultural norms that may influence interpretation of your behaviour towards students.

#### 4. Interaction with students with identified needs

- Be especially sensitive interacting with students who may have poor 'boundaries' for appropriate behaviour after being traumatised by physical, emotional or sexual abuse, because they may misinterpret your actions;
- Schools for Specific Purposes and those in Juvenile Justice Centre's have particular requirements for child protection, due to the needs of students. Therefore, careful training, planning, programming, documenting and reporting will help protect students from neglect or abuse, and staff from complaints or allegations. Awareness by all staff, including non-teaching staff, and where appropriate parents or caregivers, of appropriate strategies and their purpose with individual students is desirable and this will usually be gained in the development of individual management programs.

#### Poor or unacceptable practice

##### 1. School and classroom culture

- Excluding students from a lesson or activity, then leaving them unsupervised in corridors, classrooms or storerooms
- Leaving a class unattended or dismissing students early from a lesson so that they are unsupervised
- Not reporting concerns about risk of harm to a child or misconduct of a staff member towards a student
- Attempting to physically prevent a student from entering or leaving a classroom, unless there is a concern for the safety of the student, other students or staff
- Closing doors or windows to rooms without checking students are safely out of the way
- Pursuing a student who is attempting to run away unless that student is in immediate danger or is likely to harm another person
- Shouting angrily at students to intimidate them
- Commenting to or about students on the basis of disability, gender, sexuality, cultural or racial stereotypes.

##### 2. Care and discipline of children

- Public disciplining or humiliating a student as punishment or as an example to other students
- Throwing an object, such as a duster, chalk, ball or book, at a student to get their attention
- Threatening students with physical punishment
- Corporal punishment, such as hitting, smacking or caning, of students is prohibited;
- Providing inadequate supervision for students while on duty during excursions
- Not appropriately responding to or referring clear requests from students for medical or first aid attention
- Arranging activities or meetings alone with a student that are not within school guidelines or that are without the informed approval of a supervisor and, if appropriate, the parent or caregiver
- Targeting students unfairly for criticism or prejudging complaints from other staff or students about their behaviour based on past conduct.

##### 3. Teacher-student relationships

- Teasing students or unfairly withholding praise from them
- Putting your arms around students while instructing them on the computer
- Developing a practice of cheek kissing as a greeting or for congratulating students
- Repeatedly and unnecessarily touching students on the back, shoulders, arms or legs
- Allowing a student to sit on your lap
- Undressing in front of a student, e.g., in PE or Activity Centre change rooms
- Giving gifts or money to students as a reward or incentive for good behaviour or as a gesture of friendship
- Conversing about sexual matters unrelated to a syllabus
- Telling jokes of a sexual nature

- Making sexually suggestive remarks or actions, obscene gestures or showing inappropriate videos
- Deliberately exposing a student to the sexual behaviour of others, including access to pornography.

Practices in the following three bullet points are prohibited (and may also be criminal acts):

- Teachers must not have sexual relationships with students. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non-consensual or condoned by parents or caregivers (the ages of the students or staff members involved are also irrelevant)
- Teachers must not give students alcohol or other drugs (except prescribed medication in accordance with department and school policy), or encourage or condone the use of alcohol or other drugs by students
- Possessing, computer downloading or distribution of child pornography.

#### 4. Interaction with students with identified needs

- Using unnecessary force to make physical contact with a student as a prompt for a verbal instruction or to force compliance
- Failing to implement strategies negotiated and outlined in individual student management programs

5. Using physical contact to contain confrontational behaviour of students of all ages (particularly those with identified behaviour or conduct disorders) unless there is a concern for the safety of the student, other students or staff.

#### Source

- AIS
- NSW Education & Communities

#### Policy Review Date

**July 2017**