



## **MELBA COLLEGE DUTY OF CARE POLICY**

### **RATIONALE:**

Government school principals are required to plan, implement and monitor arrangements to ensure the safety, security and wellbeing of students. 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.

### **GUIDELINES:**

Although the general duty is to take reasonable steps to protect students from reasonably foreseeable risks of injury, specific (but not exhaustive) requirements of the duty involve providing adequate supervision in the school or on school activities as well as providing safe and suitable buildings, grounds and equipment. Schools will satisfy the duty of care by allocating responsibilities to different staff. For example, the principal is responsible for making and administering such arrangements for supervision as are necessary according to the circumstances in each school, 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 duty extends to intervention in single-sex areas if need be by a teacher of the other gender.

Whenever a teacher-student relationship exists, teachers have a special duty of care. This has been expressed as: "a teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher's charge from risks of injury that the teacher should reasonably have foreseen." (Richards v State of Victoria). Whilst each case regarding a teacher's legal duty of care will be judged on the circumstances that occurred at the time, the following common examples may be times when a teacher has failed to meet their legal duty of care responsibilities to their students:-

- arriving late to scheduled timetabled yard duty responsibilities
- failing to act appropriately to protect a student who claims to be bullied
- believing that a child is being abused but failing to report the matter appropriately
- being late to supervise the students outside the classroom after the bell/music has sounded
- leaving students unattended in the classroom
- ignoring dangerous play
- staff leaving the school without notification
- inadequate supervision on a school excursion

The nature and extent of the duty will vary according to the circumstances. For example, the standard of care required will be higher when taking a group of year 7 students for swimming lessons than when teaching a group of year 12s in the classroom. The important issue in all cases will be what precautions the school could reasonably be expected to have taken to prevent the injury from occurring. This will involve consideration of the following factors:

- 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.

## **RISKS TO STUDENTS OUTSIDE THE SCHOOL ENVIRONMENT:**

A number of cases have established that, in some circumstances, a school's duty (and therefore the Department's duty) will extend beyond school hours and outside of school grounds. The duty will be extended to outside school hours and premises when the relationship between the school and the student requires it in the particular circumstances. Whether the duty extends outside of school grounds depends on all the circumstances of each individual case, and the school's knowledge of any dangers.

There will be other situations in which schools will be under a duty to take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to students is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.

Legal cases establish that a teacher's duty of care does not start nor end at precise times during the day. The approach generally taken is that a teacher's duty applies irrespective whether the risk occurs in or outside the school environment. However, the important issue in all cases will be whether the school took reasonable steps to protect the student from the risk. For example, in 1996, a non-government school in NSW (Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman) was found liable for an injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. In that case, the school was aware that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. Moreover, a teacher from the primary school witnessed the incident but did not intervene. The Court found that the teacher-student relationship was still in existence at the time of the injury, and therefore the school authority had a duty of care.

## **IMPLEMENTATION:**

### **1. CLASSROOM SUPERVISION:**

- It is not appropriate to leave students in the care of ancillary staff, parents or trainee teachers (At law, the Duty of care cannot be delegated) This also applies for incursions (At law, the Duty of care cannot be delegated)
- It is only appropriate to leave students in the care of external education providers when a Memorandum of Understanding (MOU) is in place.
- In an emergency situation use the phone for the Principal or Assistant Principal or contact the teacher in the next room. (if appropriate – send another student for assistance)
- No student should be left unsupervised outside the classroom as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted by sending a student to a colleague's classroom, or to the Year Level Leader, Assistant Principal or Principal. This should be accompanied by documentation and appropriate follow up. The teacher, Year Level Leader, Principal or Assistant Principal is to be contacted first to alert them that the student is on their way.

### **2. MOVEMENT OF STUDENTS:**

Care needs to be taken in allowing students to leave the room to work in other areas of the school. Use of students as monitors outside the room during class time must only occur with the knowledge of a member of the Leadership Team, Principal or Assistant Principal. Discretion is to be used when allowing students to visit the toilet during class time.

### **3. YARD SUPERVISION:**

Yard supervision is an essential element in teachers' duty of care. It is now clearly established that in supervising pupils, teacher's duty of care is one of positive action. Be aware that children are usually less constrained and more prone to accident and injury than in a more closely supervised classroom. Also be aware that yard duty supervision within the school requires the teacher to fully comply with DET guidelines and brings with it an increased duty of care. It is a teacher's responsibility to be aware of these guidelines and duty of care responsibilities. Teachers are also expected to follow College policy whilst on yard duty, as follows:

- Melba College will provide staff supervision for students arriving before school between 8.35am and 8:45am. The school will provide staff supervision for students after school between 3.05pm and 3.15pm (Tuesdays to Fridays) and 2:30pm to 2:40pm (Mondays). This information is provided to parents/guardians on a regular basis via the school newsletter. Outside of these times the supervision and/or the collection of students is the responsibility of parents/guardians.
- Teachers rostered for duty are to attend the designated area at the time indicated on the roster and remain in the designated area until the end of the break period or until replaced by the relieving teacher, whichever is applicable.
- Where a relieving teacher does not arrive for duty, the teacher currently on duty should send a message to the office, but not leave the area until replaced.
- No changes to the yard duty roster are to be made without the approval of the Daily organiser, or Assistant Principal.
- Be alert and vigilant -intervene immediately if potentially dangerous behaviour is observed in the yard or corridors

### **4. INCURSIONS, EXCURSIONS AND CAMPS:**

All staff must follow the DET guidelines when organising an excursion, incursion or camp. Incursions, excursions and camps with an external provider do not absolve supervision duties of the teacher, including first aid duties. A teacher must be present at all times and remain the person designated with duty of care responsibilities. Also be aware that camps and excursions outside the school require the teacher to fully comply with DET guidelines. Refer to the Melba Excursions Policy and the Melba Camps and Tours Policy for duty of care guidelines and responsibilities.

### **5. INFORMING STAFF OF THE LEGISLATIVE LIABILITY OF DUTY OF CARE:**

All staff at Melba will be informed of their legal requirement via:-

- A copy of this policy and associated policy documents will be published on the Melba College website.
- New staff will be informed of their Duty of Care as part of the school's Induction Program
- Staff will complete a risk assessment covering duty of care when completing planning for camps, excursions and incursions.

### **6. NEGLIGENT ADVICE:**

Teachers are frequently called upon to advise students. When doing so teachers 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 teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals
- avoid giving advice in areas unrelated to their role or where they may lack expertise.

**RELATED POLICIES & LINKS:**

- Melba Camps and Tours Policy
- Melba Excursions Policy
- Melba Student Engagement and Wellbeing Policy
- Melba On-Site Supervision of Student Policy
- <http://www.education.vic.gov.au/school/principals/spag/safety/Pages/dutyofcare.aspx>

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