

Purpose

This policy outlines how Hester Hornbrook Academy (HHA) will manage the legal duty of care owed by HHA to its students

Scope

HHA will adhere to all of its legal duty of care requirements in relation to its students

Policy

1. HHA notes the legal background of their duty of care:
 - 1.1. "Duty of care" is an element of the tort of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of the negligence of another, they should be compensated for the loss and damage which arises from the negligent act or omission.
 - 1.2. In order to successfully bring a claim in negligence for compensation for an injury, a person must establish, on the balance of probabilities, that:
 - A duty of care was owed to the person harmed at the time of the injury.
 - The risk of injury was 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 was a cause of the injury.
 - 1.3. The fact that a duty of care exists does not of itself mean that a 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.
 - 1.4. The important issue in all negligence 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.
2. HHA will take all reasonable steps to reduce the risk of harm to students, including:
 - Provision of suitable and safe premises.
 - Provision of an adequate system of supervision.
 - Implementation of strategies to prevent bullying and harassment, including cyberbullying.
 - Ensuring that medical assistance is provided to a sick or injured student.
 - Managing employee recruitment, conduct and performance.

3. HHA recognises that its duty of care is non-delegable, meaning that it cannot be assigned to another party.
4. HHA recognises that it owes a duty to take reasonable care that any student or other person on their premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the state of their premises.
5. HHA recognises that HHA staff have a special duty of care whenever a staff-student relationship exists. This means that HHA staff will take reasonable measures to protect a student in their care from risks of injury that the staff member should reasonably have foreseen.
6. HHA recognises that greater measures may need to be taken under this policy for younger students or students with disabilities.
7. HHA recognises that its duty of care to HHA students will be extended to outside school hours and premises when the relationship between the school and the student requires it in particular circumstances.
8. HHA recognises that staff are frequently called upon to advise students, and when doing so HHA 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 current best practice.
 - Keep contemporaneous notes of advice given to individuals.
 - Avoid giving advice in areas unrelated to their role or where they may lack expertise.

Accountability

Hester Hornbrook Academy Student Welfare Policy
Hester Hornbrook Academy Bullying & Harassment Procedure
Hester Hornbrook Academy Child Safe Policy
Hester Hornbrook Academy Student Supervision Procedure
Hester Hornbrook Academy Excursion Procedure
Hester Hornbrook Academy External Providers Procedure
Melbourne City Mission Human Resources Policy
Melbourne City Mission Staff Code of Conduct

Legislative context

Wrongs Act 1958 (Vic)
Education and Training Reform Act 2006 (Vic)
Australian Education Act 2013 (Cth)
Victorian School Policy & Advisory Guide – Duty of Care (DET)
VRQA Independent School Application Form – C.4.1.i, C.4.1.v, C.4.1.vi, C.4.1.vii

Supporting Material

Document number	Document title
See Accountabilities	HHA Policies and Procedures
Endorsed Copy	Available from the HHA Administration upon request

Development and Review

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