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Determining the responsible person

Purpose

This policy will provide guidelines to assist in determining the Responsible Person at Ewing Kindergarten.

Policy Statement

Values

Ewing Kindergarten is committed to:

- meeting its duty of care (refer to Definitions) obligations under the law
- ensuring staffing arrangements contribute to the safety, health, wellbeing, learning and development of all children at the service
- meeting legislative requirements for a Responsible Person (refer to Background and Definitions) to be on the kindergarten premises at all times.

Scope

This policy applies to the approved provider, persons with management or control, nominated supervisor, persons in day-to-day charge, early childhood teachers, educators, staff, students, volunteers, parents/guardians, children, and others attending the programs and activities of Ewing Kindergarten.

Background, Legislative Requirements and Guiding Documents

Background

Under the *Education and Care Services National Law Act 2010*, it is an offence to operate an approved centre-based education and care service unless a responsible person (*refer to Definitions*) is physically in attendance at all times the service is educating and caring for children.

An approved provider must not operate a service unless there is at least one nominated supervisor appointed for that service. The nominated supervisor does not have to be in attendance at the service at all times, but in their absence, a responsible person, such as a person in day-to-day charge must be present at all times.

Legislative Requirements

Relevant legislation and standards include but are not limited to:

- Child Safe Standards
- Education and Care Services National Law Act 2010
- Education and Care Services National Regulations 2011

- National Quality Standard, Quality Area 4: Staffing Arrangements
- National Quality Standard, Quality Area 7: Leadership and Service Management
- Worker Screening Act 2020
- Worker Screening Regulations 2021 (Vic)
- Working with Children Act 2005 (Vic)
- Working with Children Regulations 2006 (Vic)

The most current amendments to listed legislation can be found at:

- Victorian Legislation – Victorian Law Today: www.legislation.vic.gov.au
- Commonwealth Legislation – Federal Register of Legislation: www.legislation.gov.au

Strategies for Policy Implementation/ Procedures

The Approved Provider is responsible for:

- Ensuring there is a responsible person on the premises at all times the service is delivering education and care programs for children (National Law: Section 162)
- Nominating sufficient nominated supervisors to meet legislative requirements for a responsible person at the service at all times, including during periods of leave or illness (National Law: Section 161A)
- Ensuring that a person nominated as a nominated supervisor or a person in day-to-day charge:
 - is at least 18 years of age
 - has adequate knowledge and understanding of the provision of education and care to children
 - has the ability to effectively supervise and manage an education and care service
 - has not been subject to any decision under the National Law, or any other children's services or education law, to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person
 - has a history of compliance with the National Law and other relevant laws (Regulations 117C and 117B)
- Ensuring that the service does not operate without a nominated supervisor(s), and that the nominated supervisor(s) has given written consent to be in the role (National Law: Section 161) (Regulation 117A (b))
- Ensuring that an early childhood teacher/educator gives written consent to being a person in day-to-day charge (Regulation 117A (b))
- Ensuring that the name of the nominated supervisor is displayed prominently at the service (National Law: Section 172) (Regulation 173)
- Ensuring that information about the nominated supervisor, including name, address, date of birth, evidence of qualifications, approved training, a Working with Children Clearance or teaching registration, and other documentary evidence of fitness to be a nominated supervisor (refer to Staffing Policy) is kept on the staff record (Regulation 146)
- Notifying the Regulatory Authority if:
 - there is a change to the name or contact details of the nominated supervisor (National Law: Section 56, Regulation 35)
 - the nominated supervisor is no longer employed or engaged by the service
 - has been removed from the role
 - the nominated supervisor withdraws their consent to the nomination

- if a nominated supervisor or person in day-to-day charge has their Working with Children Clearance or teacher registration suspended or cancelled, or if they are subject to any disciplinary proceedings under the law
- there is any other matter or incident which affects the ability of the nominated supervisor to meet minimum requirements and re-assessing the nominated supervisor's suitability for the role
- Notifying the approved provider and the Regulatory Authority within 7 days of any changes to their personal situation, including a change in mailing address, circumstances that affect their status as fit and proper, such as the suspension or cancellation of a Working with Children Clearance or teacher registration, or if they are subject to disciplinary proceedings.
- Ensuring that, when the nominated supervisor is absent from the premises, an alternative responsible person is on site (National Law: Section 162)
- Ensuring that the nominated supervisor and person in day-to-day charge have a sound understanding of the role of responsible person (refer to Attachment 1)
- Ensuring that the staff record includes the name of the responsible person at the centre-based service for each time that children are being educated and cared for by the service (Regulation 150)
- Ensuring that the nominated supervisors and person in day-to-day charge have successfully completed child protection training (refer to Child Safe Environment and Wellbeing Policy) (National Law: Section 162A)
- Developing rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children.

The Nominated Supervisor is responsible for:

- Ensuring there is a responsible person on the premises at all times the service is delivering education and care programs for children (National Law: Section 162)
- Ensuring that a person nominated as a nominated supervisor or a person in day-to-day charge:
 - is at least 18 years of age
 - has adequate knowledge and understanding of the provision of education and care to children
 - has the ability to effectively supervise and manage an education and care service
 - has not been subject to any decision under the National Law, or any other children's services or education law, to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person
 - has a history of compliance with the National Law and other relevant laws (Regulations 117C and 117B)
- Ensuring that the service does not operate without a nominated supervisor(s), and that the nominated supervisor(s) has given written consent to be in the role (National Law: Section 161) (Regulation 117A (b))
- Ensuring that an early childhood teacher/educator gives written consent to being a person in day-to-day charge (Regulation 117A (b))
- Ensuring that the name of the nominated supervisor is displayed prominently at the service (National Law: Section 172) (Regulation 173)
- Ensuring that information about the nominated supervisor, including name, address, date of birth, evidence of qualifications, approved training, a Working with Children Clearance or teaching registration, and other documentary evidence of fitness to be a nominated supervisor (refer to Staffing Policy) is kept on the staff record (Regulation 146)
- Notifying the Regulatory Authority if:
 - there is a change to the name or contact details of the nominated supervisor (National Law: Section 56, Regulation 35)
 - the nominated supervisor is no longer employed or engaged by the service
 - has been removed from the role

- the nominated supervisor withdraws their consent to the nomination
 - if a nominated supervisor or person in day-to-day charge has their Working with Children Clearance or teacher registration suspended or cancelled, or if they are subject to any disciplinary proceedings under the law
 - there is any other matter or incident which affects the ability of the nominated supervisor to meet minimum requirements and re-assessing the nominated supervisor's suitability for the role
- Notifying the approved provider and the Regulatory Authority within 7 days of any changes to their personal situation, including a change in mailing address, circumstances that affect their status as fit and proper, such as the suspension or cancellation of a Working with Children Clearance or teacher registration, or if they are subject to disciplinary proceedings.
 - Ensuring that, when the nominated supervisor is absent from the premises, an alternative responsible person is on site (National Law: Section 162)
 - Ensuring that the nominated supervisor and person in day-to-day charge have a sound understanding of the role of responsible person (refer to Attachment 1)
 - Ensuring that the staff record includes the name of the responsible person at the centre-based service for each time that children are being educated and cared for by the service (Regulation 150)
 - Supporting the approved provider to develop rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children
 - Notifying the Approved Provider and the Regulatory Authority within 7 days of any
 - changes to their personal situation, including a change in mailing address,
 - circumstances that affect their status as fit and proper, such as the suspension or
 - cancellation of a Working with Children Check or teacher registration, or if they are subject to disciplinary proceedings.

Other educators are responsible for:

- Ensuring that an early childhood teacher/educator gives written consent to being a person in day-to-day charge (Regulation 117A (b))
- Meeting the qualifications, experience and other requirements if they wish to be nominated as a Person in day-to day Charge
- Providing written consent to be the Person in day-to-day Charge
- Ensuring they have a sound understanding of the role of Responsible Person.

Parents/Guardians are responsible for:

- Reading and understanding this policy
- Being aware of the Responsible Person at the service on a daily basis.

Volunteers and Students, while at the Kindergarten are responsible for:

- Following this policy and its procedures.

ATTACHMENTS

- Attachment 1: Responsibilities of a nominated supervisor

Evaluation

In order to assess whether the values and purposes of the policy have been achieved, the approved provider will:

- regularly seek feedback from everyone affected by the policy regarding its effectiveness, particularly in relation to affordability, flexibility of payment options and procedures for the collection of fees

- monitor the implementation, compliance, complaints and incidents in relation to this policy
- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of the service's policy review cycle, or as required
- notifying all stakeholders affected by this policy at least 14 days before making any significant changes to this policy or its procedures, unless a lesser period is necessary due to risk (*Regulation 172 (2)*)

Definitions

Person in day-to-day charge: A person who is placed in day-to-day charge of an education and care service by an approved provider or a nominated supervisor; and who has consented to the placement in writing (*Regulation 117A*)

Person with management or control: Where the approved provider of a service is an eligible association, each member of the association's executive committee is a person with management or control and has the responsibility, alone or with others, for managing the delivery of the education and care service (*National Law: Definitions (b)*).

Responsible person: Centre-based services must have a responsible person present at all times that the service is delivering education and care. The responsible person is the person in day-to-day charge at the service and can be one of the following:

- the approved provider, if the approved provider is an individual, or in any other case, a person with management or control (*refer to Definitions*) of an education and care service operated by the approved provider
- the nominated supervisor of the service
- a person placed in day-to-day charge of the service. (*National Law, Section 162*)

Nominated supervisor: A person who has been nominated by the approved provider of the service under *Part 3 of the Act* and who has consented to that nomination in writing can be the nominated supervisor. All services must have a nominated supervisor(s) with responsibility for the service in accordance with the *National Regulations (Section 5 and 161)*

Working with Children (WWC) Check: The check is a legal requirement under the *Worker Screening Act 2020* for those undertaking paid or voluntary child-related work in Victoria. The Department of Justice assesses a person's suitability to work with children by examining relevant serious sexual, physical and drug offences in a person's national criminal history and, where appropriate, their professional history.

Working with Children (WWC) Clearance: A WWC Clearance is granted to a person under Worker Screening legislation if:

- they have been assessed as suitable to work with children
- there has been no information that, if the person worked with children, they would pose a risk to those children
- they are not prohibited from attempting to obtain, undertake or remain in child-related employment.

Related Policies and Procedures

- Child Safe Environment and Wellbeing
- Code of Conduct
- Participation of Volunteers and Students
- Privacy and Confidentiality
- Staffing

- Supervision of Children

References and Further Sources

- Australian Children's Education and Care Quality Authority (ACECQA), Information Sheets: www.acecqa.gov.au
- Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011: www.acecqa.gov.au
- Guide to the National Quality Framework: www.acecqa.gov.au

ATTACHMENT 1: RESPONSIBILITIES OF A PERSON IN DAY-TO-DAY CHARGE

As the person responsible for the day-to-day management of an approved service, nominated supervisors have a range of responsibilities under the National Law and National Regulations including:

Note: If the nominated supervisor is not present, the allocated responsible person should be aware and enact these responsibilities

Educational programs

- ensuring educational programs are:
 - based on and delivered in accordance with an approved learning framework
 - based on the developmental needs, interests and experiences of each child
 - designed to take into account the individual differences of each child (National Law: Section 168)
 -
 - Supervision and safety of children
- ensuring children are adequately supervised, are not subject to inappropriate discipline, and are protected from harms and hazards (National Law: Sections 165-167)

Entry to and exit from the premises

- ensuring children do not leave the education and care service premises except in accordance with the National Regulations (for example, with a parent, on an authorised excursion, or for emergency medical treatment)
- ensuring that a parent of a child being educated and cared for by the service may enter the service premises at any
- time when the child is being educated and cared for by the service—except when:
 - permitting entry would pose a risk to the safety of the children and staff or conflict with the duty of the supervisor under the National Regulations, or
 - the supervisor is aware the parent is prohibited by a court order from having contact with the child (Regulation 99)
- ensuring an unauthorised person (as defined in the National Law) is not at the service while children are present unless the person is under direct supervision (National Law: Section 170)

Food and beverages

- ensuring adequate health and hygiene practices and safe practices for handling, preparing and storing food are implemented at the service to minimise risks to children (Regulation 77)
- ensuring children being cared for by the service have access to safe drinking water at all times and are offered food and beverages on a regular basis throughout the day (Regulation 78)
- ensuring that, where food and beverages are supplied by the service, they are:
 - nutritious and adequate in quantity
 - chosen with regard to the dietary requirements of individual children (Regulation 79)
- ensuring that, where food and beverages are provided by the service, a weekly menu that accurately describes the food and beverages to be provided is displayed at the premises in a location accessible to parents (Regulation 80)
- Administration of medication
- ensuring that medication is not administered to a child being cared for by the service unless the administration is authorised (except in the case of anaphylaxis or asthma emergency) and is administered in accordance with the National Regulations (Regulations 93-96)

- where medication is administered to a child without authorisation in a case of an anaphylaxis or asthma emergency, ensuring that a parent of the child and emergency services are notified as soon as practicable (Regulation 94)

Prescription and non-prescription drugs and alcohol

- that while educating and caring for children at the service, all staff must not consume alcohol or be affected by alcohol or drugs (including prescription medication) so as to impair their capacity to supervise or provide education and care to children (Regulation 83)

Sleep and rest

- taking reasonable steps to ensure that the needs for sleep and rest of children are met, having regard to the ages, development stages and individual needs of children (Regulation 81)

Excursions

- ensuring that a risk assessment is conducted before an excursion in accordance with the National Regulations (Regulations 100-101), and specifically that the risk assessment is conducted before authorisation is sought to take a child on the excursion (Regulation 102)

Transportation of children other than part of an excursion (if applicable)

- ensuring that a risk assessment is carried out in accordance with Regulation 102C before an authorisation referred to in Regulation 102D(4) is sought to transport a child (Regulation 102B)

Staffing

- ensuring the prescribed educator to child ratios are met and each educator at the service meets the qualification requirements relevant to the educator's role (Regulations 123 - 128)