

# Family Day Care

## Breach of Educator Agreement

**Section:** 4 Staffing Arrangements

**Policy ID Number:** 4.7

**Link to National Quality Standard:** 4.2.1, 4.2.2, 7.1.3, 7.2.3

**Link to Education and Care Services National Legislation:**

### 1 Policy Statement

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All allegations of a breach of Educator Agreement shall be dealt with fairly, reasonably and without bias following the general principles of natural justice.

Information about an allegation of a breach of Educator Agreement will be kept confidential before, during and after the investigation process.

### 2 Rationale

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Family Day Care is committed to creating and maintaining a child safe organisation where protecting children and preventing and responding to child abuse is embedded in the everyday thinking and practice of all Educators, Educator family members, work experience/work placement students and volunteers irrespective of their involvement in child related duties.

To ensure:

- Educators are provided with the opportunity to respond to any allegations made about them before any decisions affecting their registration can be made; and
- Educators understand the processes that will be followed when an allegation is made that indicates they may have breached their Educator Agreement.

### 3 Procedures

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**Please Note:** This policy must be read in conjunction with the Dealing with Complaints Policy, which outlines the procedure that will be followed when a complaint is received about an Educator.

#### 3.1 Investigation of Allegations

- If it is alleged that an Educator has breached their Educator Agreement obligations, or a member of their household has harmed a child or behaved inappropriately during care, this will be reported to the appropriate authorities if required and investigated by Council when appropriate. In line with the Educator Agreement, depending on the nature of the allegation/s, the Educator may be suspended while any investigations occur.
- The Educator will be provided with both verbal and written notification of the allegation/s and, if applicable, suspension.
- If allegations require reporting to Victoria Police or other authorities Council will ensure this occurs in a timely manner. Council will be guided by the relevant authority as to the progression of Council's investigation. Council will not commence or continue any investigation if advised not to by Victoria Police or other authorities.
  - Depending the outcome of any other investigations, Council may finalise Council's investigation processes once Victoria Police or other authorities advise they have completed their investigation and Council may proceed.
  - Council will cooperate with all relevant authorities and any investigation they are undertaking. Educators are also required to do this.
- When appropriate, the investigation will be undertaken by Council officers that could include Resource Officers, the Children's Services Coordinator, the Unit Manager of Children's Services, the Manager or Early Years and Youth or relevant Child Safe Officers. This will be dependent on the nature and seriousness of the allegation/s.

- As part of any Council investigation the Educator will be provided an opportunity to respond verbally and/or in writing. If any meeting is held between the Educator and Council Officers in relation to the allegations, the Educator will be provided the opportunity for support or representation at the meeting.
  - Unavailability of a support person or representative will not unreasonably delay the investigation process.
- While investigating any allegation/s information could be gathered from other stakeholders that could include families using care either currently or previously and any members of the Educator's household.

### **3.2 Suspension**

- Suspension of an Educator will only occur in circumstances where it is considered that it could be a serious or persistent breach of the Educator Agreement. In deciding to suspend an Educator, Council will consider the nature of the allegation, whether children may be at risk of harm or if there is a risk of a detrimental outcome to the overall operation of the service.
- When an Educator is suspended this will take place immediately. When children are currently in care, families will be notified and asked to collect their children as soon as practical. It is acknowledged this may not always be immediate and there may be circumstances where a Coordination Unit staff member will attend the Educator's home until families are able to collect their children.
- If an allegation relates to a child or children, the families of those children will be provided information relating to their child/ren and the investigation processes being undertaken. Families will be kept informed of any information that is relevant about their child/ren during the investigation process.
- Families will be provided the relevant information if it is believed their child/ren may have been at risk of harm. However, to preserve the Educators right to a fair process and confidentiality families will not be given information if the allegation does not pertain to their child/ren and/or their child/ren has not been put at risk.
- Children and families will be offered access to relevant support services if these are needed as an outcome from any allegations. The Coordination Unit may also maintain contact with families to provide support.
- The Coordination Unit will endeavour to relocate children if families require this while their Educator is suspended.
- Families will be notified when the investigation is complete and when their Educator will become available again or if their Educator's Agreement has been terminated.
  - Where an Educator is reinstated families will be informed an investigation has been completed and resulted in an appropriate outcome. However, families will not be provided details of the exact outcomes as this may be a breach of the Educator's privacy.
  - During and at the end of the investigation families will be provided information that relates to their child/ren.

### **3.3 Outcome of Investigation**

- Once all information has been collected a decision will be made as to the outcome of the investigation. One of the following will occur;
  - The allegation is unsubstantiated, no further action is taken. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is unsubstantiated but additional support is put in place which could include more frequent home visits for a period of time and/or a documented plan to assist the Educator to improve performance. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is partially substantiated or minor performance issues are identified. Additional supports will be put in place such as more frequent home visits and a

- performance improvement plan. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is substantiated, and **first notice of breach** is issued. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is substantiated, and a **second notice of breach** is issued. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is substantiated, and a **third and final notice of breach** is issued. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is substantiated, and a **first and final notice of breach** is issued. If the Educator has been suspended, recommence duties immediately when they are ready; or
  - The allegation is substantiated, and the Educator Agreement is terminated as per the termination clauses outlined in the Agreement.
- Determining if it's a first, second, third and final or first and final notice of breach will be dependent on how serious the breach is and whether this is a first instance or repeated instances of breach of Educator Agreement. The Educator's history with the service will also be considered when deciding.
- The outcome will be provided to the Educator in writing.
  - In less serious situations, the Educator will be notified initially verbally so they can recommence providing care and education for children as soon as they are able. The follow up in writing will be provided as soon as practical.
  - Where a notice of breach is issued it will clearly outline the:
    - breach/es of the Educator Agreement and where relevant, the associated legislation, frameworks and/or policies and procedures; and
    - actions the Educator needs to take to rectify the breach/es; and
    - timeframes this must be achieved; and
    - additional support that will be provided by Council; and
    - steps that may be taken by Council if the breach/es are not rectified within the set timeframes.
- In all circumstances where a notice of breach is issued additional support will be put in place for the Educator. This will include additional home visits for a period of time and documented performance standards to be achieved and maintained. During this time the Coordination Unit will support the Educator to improve performance and record the changes to practice that are observed.
- The Educator might be required to undertake additional training and demonstrate improvements in practice as an outcome of the training.

### 3.4 Reporting

- Depending on the nature of the allegation/s, reporting could occur to any or all the following authorities to meet legislative requirements.
  - Department of Education and Training or other relevant State Government Departments
  - Victoria Police
  - Child Protection
  - The Commission for Children and Young People
  - Relevant Australian Government funding bodies
- When required relevant authorities will be provided updates of Council's investigation process and outcomes once determined.
- Other authorities may undertake their own investigations. Council will support and participate as required in these and Educators will also be required to comply with their requirements.

## 4 References

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- Education and Care Services National Law Act
- Education and Care Services National Regulations
- National Quality Standards
- Educator Agreement
- Moreland City Council Employee Code of Conduct
- ACECQA

### Revision History

Date	Revision No.	Revision Section	Revision Description
December 2016	1.0	All	Initial Policy Release (creation date)
March 2022	2.0	All	Updated from old Policy to new format and current information.
March 2025	Next Review Date		

**This policy and procedure supersedes the one in the Family Day Care Policy Manual dated 2016.**