



Duty of Care Policy



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Basic Belief

All government school staff will be made aware of their legal responsibilities. As part of the government school principal contract, government school principals are required to plan, implement and monitor arrangements to ensure the safety, security and wellbeing of students. In addition to their professional obligations, 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.

Definition

Whenever a student–teacher relationship exists, the teacher has a special duty of care. This is defined 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 (1969) VR 136 at p. 141)

As part of that duty, teachers are required to supervise students adequately. This requires not only protection from known hazards, but also protection from those that could arise (that is, those that the teacher should reasonably have foreseen) and against which preventive measures could be taken.

School authorities in breach of the duty of care may be liable for injuries inflicted by one student on another, as well as for injuries sustained by a student.

Schools normally 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.

Rationale

In addition to their professional obligations, 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.

- The teacher's duty of care will have a higher expectation as the child's age is lower and if students are part of the Disability and Impairment Program.
- Schools are bound by standards which are issued under legislative authority, non-compliance with these standards may amount to negligence.

AIMS

To ensure that staff have an understanding of their duty of care to students, and behave in a manner that does not compromise these legal obligations.

As part of that duty, teachers are required to supervise students adequately. This requires not only protection from known hazards, but also from those that could arise (those that the teacher could have easily foreseen) and against which preventative measures could have been taken.

- Teaching is a skilled profession and teachers must accept the legal consequences of such special knowledge and skills.
- Teachers in breach of duty of care may be liable for injuries inflicted by one student on another, as well as the injuries sustained by the student.
- For a teacher or a school to be held guilty of negligence, it must be proved that the injury was a foreseeable result of the action or lack of action. In courts this test **is not a demanding one**.
- In situations where the teacher should reasonably have foreseen the possibility of injury, the teacher has a duty to take reasonable care.

Implementation

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.

A teacher's duty of care is not confined to the geographic area of the school, or to school activities, or to activities occurring outside the school where a student is acting on a teacher's instructions. The duty also applies to situations both before and after school where a teacher can be deemed to have 'assumed' the teacher pupil relationship.

Quite apart from mandatory reporting requirements, a teacher has a concurrent duty of care to protect a student from harm that is reasonably foreseeable. A breach of this duty of care may lead to legal action being taken against the individual teacher or teachers concerned. A breach of this duty of care will be established if a teacher or principal failed to take immediate and positive steps after having acquired actual knowledge or formed a belief that there is a risk that a child is being abused or neglected, including sexual abuse.

The teacher's duty of care is greater than that of the ordinary citizen in that a teacher is obliged to protect a student from reasonably foreseeable harm or to assist an injured student, while the ordinary citizen does not have a legal obligation to respond.

All staff will be informed of their legal requirement by being made aware of our school's Duty of Care Policy.

Expectations

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 line-up of students after the bell has sounded (without organising with another teacher to supervise grade)
- leaving students unattended in the classroom
- failing to instruct a student who is not wearing a hat to play in the shade
- ignoring dangerous play
- leaving the school during time release without approval
- inadequate supervision on a school excursion/incursion

Teachers must ensure that the advice they give is correct and, where appropriate, in line with the most recent available statements from institutions or employers. Teachers should not give advice in areas outside those related to their role where they may lack expertise without seeking support and guidance from more experienced staff and / or the principal.

Risks to students outside the school environment

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.**

Risks outside the school environment may sometimes call for immediate and positive steps by a school depending on the age of students, urgency and threat of injury. There may be other situations where the school will be under a duty to take reasonable steps. In some instances, the school's control over the activity may require it to take more active measures to satisfy the requirement that it take reasonable steps.

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)
- It is not appropriate to leave students in the care of external education providers for example incursions **(At law, the Duty of care cannot be delegated)**
- In an emergency situation mobile phones are to be used to contact the Principal or Assistant Principal (if appropriate – send another student for assistance)
- All teachers and ES staff are to adhere to WYPS student wellbeing policy and follow the procedures for students withdrawal
- **No student** is to be left unsupervised **outside the classroom** as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted by sending a student to the Assistant Principal or Principal. This should be accompanied by documentation (email at the first possible chance outlining behaviour). The teacher, Principal or Assistant Principal **is to be contacted first** by phone or another student to alert them that the student is on their way.

Movement of Students

When transitioning between classrooms and specialists, students are expected to walk in an orderly line as a class with teacher supervision. Discretion is to be used when allowing students to visit the toilet during class time.

Use of students as monitors outside the room during class time must only occur with the approval of the Principal or Assistant Principal.

Yard Supervision

- Playground supervision is an essential element in a teacher's 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.
- 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 rostered for duty are to attend the designated area at the time indicated on the roster.
- Liaise with the Assistant Principal so that you can be placed on yard duty areas that ensure you can get to your classroom on time for the start of the next lesson.
- Teachers on duty are to remain in the designated area until the end of the break period or until replaced by the relieving teacher, whichever is applicable.
- No changes to the yard duty roster are to be made without the approval of the Principal or delegate.
- Be alert and vigilant -intervene immediately if potentially dangerous behaviour is observed in the yard - enforce behaviour standards and logical consequences for breaches of safety rules.
- You should always be on the move and highly visible.
- Any long term changes to the yard duty roster need to be emailed to the Assistant Principal in order to update the roster

Excursions, Incursions and Camps

Be aware that students are usually less constrained and more prone to accident and injury than in a more closely supervised classroom.

Be aware that an incursion with an external provider does 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.

Be aware that camps and excursions outside the school require the teacher to fully comply with DET guidelines and bring with it an increased duty of care. It is a teacher's responsibility to be aware of these guidelines and remain the person designated with duty of care.

Be aware that excursion and camp activities require the teacher to ensure that the venue and transport adhere to DET guidelines.

Be aware that school policy is for students to be counted on and off transport and at other times on a regular basis whilst on excursion or camp activities.

The teacher in charge of the excursion or camp will ensure that the office has copies of all confidential medical forms and permission notes with contact details regarding students attending. A copy of the attendance list will be available to the office via Compass before leaving on the camp/excursion.

Arrangements will be made for students not attending to continue their normal program at school under supervision of another classroom teacher.

The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and the first aid representative will carry the first aid kit at all times.

If the return time from an excursion or camp is delayed, the teacher in charge will contact the school to inform the Principal of the new arrival time so that parents can be contacted and a senior staff member will remain at school until they arrive.

If crossing roads students are to use designated crossing points. Staff are to walk to the middle of the crossing to ensure visibility and orderly crossing. Other staff control the flow of students across the road.

All staff must follow the DET guidelines when organising an excursion, incursion or camp. All procedural steps contained in the School camping, excursions and incursions Policy and Procedure outlines must also be followed.

Informing Staff of the legislative liability of Duty of Care

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

- A copy of this document will be provided to each member of staff at the first staff meeting at the commencement of the school year, and will be placed on the schools website.
- New staff will be informed of their Duty of Care as part of the school's Induction Program
- Duty of Care will be an agenda item at staff meetings and staff will be directed to familiarise themselves with section Student Safety of the Victorian Government Schools Policy Advisory Guide.
- Staff will complete a risk assessment including duty of care when completing planning for camps, excursions and incursions.
- Staff will be directed to the student wellbeing policy annually.