

**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.

**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.

**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.

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 class or leaving a class early
- 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
- 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

Staff members are also cautioned against giving advice on matters that they are not professionally competent to give (negligent advice). Advice is to be limited to areas within a teacher's own professional competence and given in situations arising from a role specified for them by the principal.

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.

## **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.

## **Classroom Supervision**

- Staff must not leave the classroom unattended at any time during a lesson.
- Teachers should not leave students in the care of ancillary staff, parents or trainee teachers. (At law, the Duty of care cannot be delegated)
- Teachers should not leave students in the care of external education providers, for example, during incursions. (At law, the duty of care cannot be delegated)
- In an emergency situation staff should use the phone for the Principal or Assistant Principal or contact the teacher in the next room. (if appropriate – send another student for assistance)
- Teachers must not leave students 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 Assistant Principal or Principal. This should be accompanied by documentation and appropriate follow up. The teacher, Principal or Assistant Principal is to be contacted first to alert them that the student is on their way.

## **Movement of Students**

- Care needs to be taken in allowing students to leave the room to work in other areas of the school or to carry out jobs/messages.
- Discretion is to be used when allowing students to visit the toilet during class time. It is recommended that students go to the toilet in pairs.

## **Yard supervision**

Yard supervision is an essential element in teachers' duty of care. It is now clearly established that in supervising students, teacher's duty of care is one of positive action.

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 school policy whilst on yard duty.

- Teachers rostered for duty are to attend the designated area at the time indicated on the roster.
- 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.
- The handing over of duty from one teacher to another must be quite definite and must occur in the area of designated duty. 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 timetable coordinator, Principal or Assistant Principal.
- Teachers should 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 in line with the Code of Conduct.
- Teachers should always be on the move and highly visible.

## **Excursions, Incursions and Camps**

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.

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.

- Excursion and camp activities require the teacher to ensure that the venue and transport adhere to DET guidelines.
- Students must be counted on and off transport and at other times on a regular basis whilst on excursion or camp activities.
- The teacher in charge will have copies of all confidential medical forms and permission notes with contact details.
- 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 a first aid kit.
- 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 should 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 Camp, Excursions and Incursions Policy and Procedure outlines must also be followed.

### **Informing Staff of the legislative liability of Duty of Care**

- 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 in the Red Staff Folder.
- New staff will be informed of their Duty of Care as part of the school's Induction Program.

### **References:**

<http://www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare.aspx>

**EVALUATION** This policy will be reviewed each strategic cycle or more often if necessary due to changes in regulations or circumstances.

<b>Last updated and ratified by School Council – May 2018</b>
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