

## DUTY OF CARE POLICY

### Legal Background

- “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.
- 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.
- 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 child to succeed in a negligence claim, all of these elements must be established.
- From 1 July 2017, an additional duty of care will exist for any organisation in Victoria that exercises care, supervision or authority over children, including schools. This duty of care will establish a presumption of liability, such that these organisations will need to prove that they took “reasonable precautions” to prevent child abuse, if they are to successfully defend a legal claim. The new duty does not change existing duties that schools and teachers already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

### Rationale

- Principals and teachers are held to a high standard of care in relation to children. The duty requires principals and teachers to take all reasonable steps to reduce risk, including:
  - ensuring the school complies with the seven Child Safe Standards
  - provision of suitable and safe premises
  - provision of an adequate system of supervision
  - implementation of strategies to prevent bullying
  - ensuring that medical assistance is provided to a sick or injured student
  - managing employee recruitment, conduct and performance
- The duty is non-delegable, meaning that it cannot be assigned to another party.
- Whenever a teacher-student relationship exists, teachers have a special duty of care. This has been expressed 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).
- The nature and extent of the duty will vary according to the circumstances. For example, the standard of care required will be higher when taking a group of preps for swimming lessons than when teaching a group of year 12s in the classroom.
- The important issue in all 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.
- The law has established that, in some circumstances, a school’s duty (and therefore the Department’s duty) will extend beyond school hours and outside of school grounds. Whether the

duty extends outside of school grounds depends on all the circumstances of each individual case, and the school's knowledge of any dangers. In one case, a non-government school was found liable for injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. The school knew that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. In addition, a teacher from the primary school witnessed the incident but did not intervene. The court found that the teacher-student relationship was still in existence at the time of the injury, and therefore the school authority had a duty of care.

- Additionally schools enrolling international students under the age of 18 (who are not being cared for by a parent or suitable relative) are expected to have a comprehensive home stay policy and procedures in place to assess and monitor the suitability of accommodation arrangements. See School Resource Kit and Quality Standards under Department resources at the website below.
- A number of cases have established that, in some circumstances, a school's duty (and therefore the Department's duty) will extend beyond school hours and outside of school grounds. Whether the duty extends outside of school grounds depends on all the circumstances of each individual case, and the school's knowledge of any dangers. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to children is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents/carers.
- Based on case law, whether the duty extends outside of school grounds depends on all the circumstances of each individual case, and the school's knowledge of any dangers.
- It is important that schools clearly inform parents/carers when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours.
- There will be other situations in which schools will be under a duty to take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to children is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.
- Schools enrolling international children under the age of 18 years (who are not being cared for by a parent or suitable relative) are expected to have a comprehensive home stay policy and procedures in place to assess and monitor the suitability of accommodation arrangements. See School Resource Kit and Quality Standards under Department resources at the website below.

### Purpose

- To ensure the staff at Tarneit Rise Primary School have an understanding of the nature of the legal duties owed by teachers and school staff towards children.
- To ensure the school complies with legislation and Department of Education and Training (DET) policy and guidelines.
- To ensure the school has in place strategies to enhance compliance with the Child Safe Standards 1, 2, 4 and 6.

### Implementation

- The safety and wellbeing of children is our highest priority.
- We have a **zero tolerance of child abuse** in any form.
- The principal will ensure that staff members have an understanding of their duty of care to children as it applies to classroom supervision, movement of children, yard supervision, camps and excursions, first aid and health care needs and medication.
- 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 children:

- arriving late to class or leaving a class early
- arriving late to scheduled timetabled yard duty responsibilities
- failing to act appropriately to protect a child 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 children after the bell has sounded
- leaving children unattended in the classroom
- failing to instruct a child who is not wearing a hat to play in the shade
- ignoring dangerous play
- leaving the school during time release without signing out at the office
- inadequate supervision on a school excursion
- Given that the duty of care may extend beyond school hours, the school will be alert to situations in which immediate and positive steps may be required. If for example, a live power line came down outside the school, no emergency workers had arrived, and children were about to be dismissed to walk home, the school would not allow them to walk out to that danger unsupervised.
- In providing advice to children, teachers should limit their advice to areas within their professional knowledge, given in situations arising from a role specified by the principal and ensure such advice is correct and in line with the most recent available statements.
- Teachers must avoid giving advice in areas unrelated to their role or where they may lack expertise.
- Informing staff of the legislative liability of Duty of Care, all staff members 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 intranet.
  - New staff members will be informed of their Duty of Care as part of the school's Induction Program.
- Staff will complete a risk assessment including duty of care when completing planning for camps, excursions and incursions.
- The school will regularly inform parents/carers when playground supervision will be provided and that no supervision of the playground occurs outside these hours.
- Departmental resources: The [PROTECT](#) Portal - provides further information on how schools can meet their obligations under the Child Safe Standards  
[ISP Quality Standards and School Resources](#) - see: International Student Program Quality Standards for Schools, Quality Standard 5 - Younger Students will be utilised if necessary.
- Please refer also to the school's Mandatory Reporting Policy, Camps and Excursions Policy, Yard Duty/On-Site Supervision Policy, Diabetes Management Policy, Health Care Needs Policy, Anaphylaxis Management Policy, Asthma Management Policy, Epilepsy & Seizure Policy, First Aid Policy, Sun & UV Protection [SunSmart] Policy, Bullying & Harassment Policy, Volunteer Workers Policy, Visitors to the School Policy and the Emergency Management Plan and the Critical Incident Management Plan all of which relate to the school's duty of care.
- Please also refer to the Child Safe Standards.

### **Evaluation**

- This policy will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update late November 2017).

<u>Ratification Date</u>	<u>Review Date</u>	<u>Policy Number</u>	<u>Version Number</u>	<u>Date Produced</u>
July 2018	2021	28	2	September 2017

Reference:

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