



# DUTY OF CARE

## POLICY

### Introduction

Wodonga Federation of Government Schools (The Federation) is committed to providing a safe environment for students and staff.

### Purpose

The purpose of this policy is:

1. To explain the nature of the legal duties owed by staff towards students and to ensure that staff understand their legal and organisational duty of care to students and behave in a manner that does not compromise these legal obligations.
2. To allocate duty of care responsibilities to different staff.

### Policy

Principals and teachers are held to a high standard of care in relation to students. In addition to their professional obligations, principals and teachers have a legal duty to take reasonable steps to protect students in their care from risks of injury that are reasonably foreseeable. The school has policies and procedures for the duty of care owed to students and realise that different and sometimes greater measures may need to be taken for younger students, or students with disabilities to discharge this duty of care.

The Federation and Melrose Primary School recognise that whenever a student-teacher relationship exists, the teacher has a special duty of care. This has been expressed as: 'a teacher is to take such measures as are reasonable in circumstances to protect a student under the teacher's charge from risks of injury that the teacher should reasonably have foreseen'. This includes the democratic principals listed in the ETRA elected Government; the rule of law; equal rights for all before the law; freedom of religion; freedom of speech and association; and the values of openness and tolerance.

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.

### Responsibilities

| Role      | Responsible for   |
|-----------|---|
| Principal | <ul style="list-style-type: none"><li>• Making and administering such arrangements for supervision as are necessary according to the circumstances in each school.</li><li>• Planning, implementing and monitoring arrangements to ensure the safety, security and wellbeing of students.</li></ul> |
| Teachers  | <ul style="list-style-type: none"><li>• Carrying out their assigned supervisory duties in such a way that students are, as far as can be reasonably expected, protected from injury.</li></ul>  |

## Definitions

| Term   | Definition   |
|--|--|
| Organisational Duty of Care to prevent child abuse | This duty of care creates presumption of liability, such that schools will need to prove that they took 'reasonable precautions' to prevent child abuse if they are defending a legal claim. What is meant by 'reasonable precautions' is not defined in the legislation and will be dependent on the organisation.  |
| Duty of Care                                       | 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.   |
| Reasonable steps to reduce risk                    | Principals and teachers are to take all reasonable steps to reduce risk, including: <ul style="list-style-type: none"><li>• Provision of suitable and safe premises</li><li>• Provision of an adequate system of supervision</li><li>• Implementation of strategies to prevent bullying</li><li>• Ensuring that medical assistance is provided to a sick or injured student</li><li>• Managing employee recruitment, conduct and performance</li></ul> |

## Procedure

- The general duty requires principals and teachers to take all reasonable steps to protect students from reasonably foreseeable risks of harm.
- 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 student 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 reasonable harm or to assist an injured student, while ordinary citizens do 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 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 or 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 (such as career's teacher, year level coordinator or subject teacher) 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.

### **Classroom Supervision**

- It is not appropriate to leave students in the care of education support 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).
- Discretion is to be used when allowing students to visit the toilet during class time.
- For further information please refer to Student Engagement Policy.

### **Yard Supervision**

- Yard supervision is an essential element in teachers' duty of care.
- 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 designed 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 charges to the yard duty roster are to be made without the approval of the Daily organiser, or Leadership.

## **Excursion, Incursions and Camps**

- 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 an excursion 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 the 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 will have copies of all confidential medical forms and permission notes with contact detail. A copy of this material will be kept at school.
- Arrangements will be made for students not attending to continue their normal program at school under supervision of.
- The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and a first aid kits.
- 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.
- 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 be followed.

## **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. Consider for example, if a live power line came down outside the school, no emergency workers had arrived, and students are about to be dismissed to walk home. No school would allow the children to walk out to that danger unsupervised.
- There will be a number of 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 requirements that it take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. In other instances, the school may not control the activity, and the reasonable measures available to it will be limited. For example, fights at a local train or bus stop between students from rival schools may involve informing the police, contacting the other school to implement preventative measures, and notices to parents and students.

- While students are generally free to move around the buildings and work independently in break out spaces and designated study areas they must be under (indirect) adult supervision at all times. Staff are responsible for their students at all times.

## **Communication**

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 stored with other policies.
- New staff will be informed on 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.

## **Reviewing**

An annual review shall be conducted in line with the Child Safety Policy Review, to assess whether The Federation's Duty of Care Policy requires modification.

## **Related Policies**

- Wodonga Federation of Government Schools Playground Supervision
- Wodonga Federation of Government Schools First Aid Policy
- Wodonga Federation of Government Schools Child Safety Policy
- Wodonga Federation of Government Schools Working with Children Check Policy
- Wodonga Federation of Government Schools Visitor Policy
- Wodonga Federation of Government Schools Mandatory Reporting Policy
- Member Student Engagement and Wellbeing Policy
- Wodonga Federation of Government Schools Privacy Policy
- Wodonga Federation of Government Schools Camps and Excursions Policy