



Clayton North Primary School
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Duty of Care Policy

DEFINITION

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.

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 the 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. This duty extends to intervention in single-sex areas if need be by a teacher of the other gender.

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

Principals and teachers are held to a high standard of care in relation to students. The duty requires principals and teachers to take all reasonable steps to reduce risk, including:

- 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.

The duty is *non-delegable*, meaning that it cannot be assigned to another party.

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 six students 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.

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
- 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 a 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 the employer. Teachers and principals 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.**

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 primary children are about to be dismissed to walk home. No school would allow the children to walk out to that danger unsupervised.

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. The duty will be extended to outside school hours and premises when the relationship between the school and the student requires it in the particular circumstances.

Whether the duty extends outside of school grounds therefore 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 when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours. Similarly, some risks outside of school will involve informing parents of the risks and leaving it to parents to make appropriate arrangements.

Staff are responsible for their students at all times.

CLASSROOM SUPERVISION

- It is **not** appropriate to leave students in the care of Education Support staff, parents or pre-service teachers (the Duty of care cannot be delegated)
- It is **not** appropriate to leave students in the care of external education providers during incursions, excursions or sports clinics.
- No student should be left unsupervised outside the classroom as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted by sending a student to another supervised 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.
- Specialist teachers who have a timetabled class from 2:30pm to 3:30 are responsible for dismissing children.
- The home group classroom teacher is responsible for supervising the lunch eating time.

MOVEMENT OF STUDENTS

Care needs to be taken in allowing students to leave the room to work in other areas of the school.

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

- Students must always go with at least one other student to visit the toilet during class time.

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 students in the yard 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 are also expected to follow the On-site Supervision 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 Daily organiser, or Assistant Principal.
- 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.

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.
- 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.
- 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 details. A copy of this material will also be kept at school.
- 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 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 are used to 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 and will be placed on the school's shared network drive and Google Drive.
- New staff 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.
- Staff will be directed to the Student Engagement and Student Wellbeing policy annually.

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

EVALUATION

This policy will be reviewed as part of the school's three-year review cycle, in full consultation with all staff.

Date Implemented	Re - Ratified by School Council on September 18 th 2017
Author	Brian Mills
Approved By	Staff; School Council
Approval Authority (Signature & Date)	
Date Reviewed	September 18 th 2017
Responsible for Review	Principal
Review Date	2020
References	