DUTY OF CARE POLICY

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

Purpose:
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.

Broad Guidelines:
Roslyn Primary School will 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:

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 Staff Shared and in the staff handbook.
- 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 Engagement Wellbeing Policy annually.
• 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.
• 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).
• Teachers must ensure that the advice they give is correct and, where appropriate. 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.

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.

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 requirement 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.
**Yard Duty**  (Also refer to Onsite Supervision Policy & Procedures)

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 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 DEECD 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 all school policies 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.

The changeover place for teachers on yard duty at Roslyn PS is under the courtyard tree.

No changes to the yard duty roster are to be made without the approval of the 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**  (Also refer to Excursion & Camp Procedures)

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

All staff must follow the DEECD 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.

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 DEECD 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 DEECD guidelines.

**Teacher In-Charge Must:**

- Students to be counted on and off transport and at other times on a regular basis whilst on excursion or camp activities. It is the responsibility of the teacher in charge to check this happens.

- Have copies of all confidential medical forms and permission notes with contact details. A copy of this material will also be kept at school.

- Carry a mobile phone and a first aid kit.

- If the return time from an excursion or camp is delayed, 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.
**Mandatory Reporting**

In cases where staff have concerns about a child or young person, they should discuss their concerns with the principal or a member of the school leadership team. If staff have significant concerns for the wellbeing of a child or young person they must report their concerns to DHS Child Protection or Child FIRST.

Mandatory reporters, who believe on reasonable grounds that a child or young person is in need of protection from physical injury or sexual abuse, must report their concerns to Department of Human Services (DHS) Child Protection.

All other school staff who believe on reasonable grounds that a child or young person is in need of:
- protection are encouraged to report their concerns to DHS Child Protection or Victoria Police.
- therapeutic treatment are encouraged to report their concerns to DHS Child Protection.

**Mandatory Reporting**

Mandatory reporters must make a report as soon as practicable if, in the course of practising their profession or carrying out their duties, they form a belief on reasonable grounds that a child or young person is in need of protection, as a result of physical injury or sexual abuse, and the child’s parents are unable or unwilling to protect the child.

Mandatory reporters are:
- Teachers registered to teach or who have permission to teach pursuant to the Education and Training Reform Act 2006 (Vic)
- Principals of government and non-government schools
- Registered medical practitioners
- Nurses
- All members of the police force

Any person may make a report if they believe on reasonable grounds that a child is in need of protection for any of the following reasons:
- The child has been abandoned and there is no other suitable person who is willing and able to care for the child.
- The child’s parents are dead or incapacitated and there is no other suitable person who is willing and able to care for the child.
- The child has suffered or is likely to suffer significant harm as a result of physical injury and the parents are unable or unwilling to protect the child.
- The child has suffered or is likely to suffer significant harm as a result of sexual abuse and their parents are unable or unwilling to protect the child.
- The child has suffered or is likely to suffer emotional or psychological harm and the parents are unable or unwilling to provide basic care, or effective medical or other remedial care.

**Duty of care**

School staff have a duty of care to protect the safety, health and wellbeing of children in their care. If a staff member has concerns about the safety, health and wellbeing of children in their care it is important to take immediate action.
In the case of a child who may be in need of protection or therapeutic treatment, or where there are significant concerns about the wellbeing of a child, school staff can discharge this duty of care by taking action which includes the following: physical abuse, sexual abuse, emotional abuse, neglect, medical neglect, family violence. Other reports to DHS Child Protection may be needed for: risk-taking behaviour, female genital mutilation, unborn child, child or young person exhibiting sexually abusive behaviours.

There are many indicators of child abuse and neglect. The presence of a single indicator, or even several indicators, does not prove that abuse or neglect has occurred. However, the repeated occurrence of an indicator, or the occurrence of several indicators together, should alert teachers to the possibility of child abuse and neglect.

Refer to Appendix 1 on How to make a Mandatory Report

Appendix 1

Making a Mandatory Report

This table describes how to make a mandatory report.

**Step Description**

School staff should keep comprehensive notes that are dated and include the following information:

- Description of the concerns (e.g. physical injuries, student behaviour)
- Source of those concerns (e.g. observation, report from child or another person)
- Actions taken as a result of the concerns (e.g. consultation with principal, report to DHS Child Protection etc)

School staff should discuss any concerns about the safety and wellbeing of students with the principal or a member of the school leadership team. The individual staff member should then make their own assessment about whether they must or may make a report about the child or young person.

School staff should gather the relevant information necessary to make the report. This should include the following information:

- Full name, date of birth, and residential address of the child or young person
- Details of the concerns and the reasons for those concerns
- The individual staff member’s involvement with the child and young person
- Details of any other agencies who may be involved with the child or young person

Make a report to the relevant agency.

Make a written record of the report which includes the following information:

- The date and time of the report and a summary of what was reported
- The name and position of:
  - the person who made the report
  - the person who received the report.

Notify relevant school staff and/or Departmental staff of the report.

- School staff should advise the principal or a member of the leadership team if they have made a report.
- In the case of international students, the principal must notify the International Education Division of the Department on (03) 9637 2990 to ensure that appropriate support is arranged for the student.
In the case of Koorie students, the principal must notify the Regional Office to ensure that the regional Koorie support officer can arrange appropriate support for the student. Notify the Victoria Police if there is concern that a criminal offence may have been committed.