

DUTY OF CARE

POLICY

“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 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.

Principals and teachers are held to a high standard of care in relation to students.

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

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.”¹

PURPOSE

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 purpose of this policy is to explain the nature of the legal duties owed by staff towards students and to ensure that staff understand their duty of care to students and behave in a manner that does not compromise these legal obligations.

IMPLEMENTATION

1. The general duty requires principals and teachers to take all reasonable steps to protect students from reasonably foreseeable risks of harm, including:
 - provision of suitable and safe buildings, grounds and equipment;
 - provision of an adequate system of supervision;
 - implementation of strategies to prevent bullying;
 - ensuring that appropriate and timely medical assistance is provided to a sick or injured student;
 - managing employee recruitment, conduct and performance.
2. 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. A number of cases have established that, in some

¹ See: Richards v State of Victoria 1969 VR 136. <https://www.victorianreports.com.au/judgment/view/1969-VR-136>.

circumstances, a school's duty will extend beyond school hours and outside of school grounds. 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.
3. 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 legal duty of care to students:
- arriving late to scheduled timetabled responsibilities including yard duty;
 - 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 students;
 - leaving students unattended in the classroom or ignoring dangerous play;
 - failing to instruct a student who is not wearing a hat to play in the designated shade area;
 - leaving the school during 'non face-to-face teaching time' without approval and without signing out;
 - inadequate supervision on a school excursion.
4. Teachers are also cautioned against giving advice in areas where they may lack expertise and/or on matters that they are not professionally competent to give (as this could be 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 careers teacher, year level coordinator or subject teacher) specified for them by the Principal. Teachers should not give advice in areas where they may lack expertise.

Learning Space Supervision

1. It is not appropriate to:
 - leave students in the care of ancillary staff, parents or pre-service teachers (at law, the duty of care cannot be delegated);
 - leave students in the care of external education providers, for example in school visits (at law, the duty of care cannot be delegated);
 - leave a student unsupervised outside the learning space as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted by sending a student to a colleague's learning space, contacting them first to alert them that the student is on their way accompanied by 2 other students.
2. In an emergency situation telephone the Principal or Assistant Principal or contact the teacher in the next room or send two students for assistance.

Movement of Students

1. Use of students as monitors outside the room during class time must be minimised and students must always be in pairs moving about the school during learning time.
2. Discretion is to be used when allowing students to visit the toilet during class time again students should be in pairs.
3. Movement of students around the campus must follow the internal procedures in the Staff Handbook.

Yard supervision

1. Yard supervision is an essential element in teachers' duty of care. In supervising students in the school yard a teacher's duty of care is one of positive action.
2. Teachers must be aware that students are usually less constrained and more prone to accident and injury than in a more closely supervised learning space, especially towards the end of a break time.
3. Teachers must be alert and vigilant; intervene immediately if potentially dangerous behaviour is observed in the yard and enforce behaviour standards and logical consequences for breaches of safety rules.
4. Teachers should always be on the move focused on the students at play and be wearing the high visibility vest.
5. 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.
6. Teachers rostered for yard duty are to attend the designated area at the time indicated on the duty roster.
7. Teachers on yard duty are to remain in the designated area until the end of the relevant break period or until replaced by the relieving teacher.
8. The handing over of yard 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 yard duty, the teacher on duty should send a message to the office/staffroom, but not leave the area until replaced.
9. Teachers scheduled for First Aid duty must promptly attend to the student seeking first aid on arrival at the staffroom. The first aid procedures are as per the First Aid Policy.
10. No changes to the yard duty roster are to be made without the approval of the organiser, or Principal Class Employee or nominee.

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 of whether the risk occurs in or outside the school environment. 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.

The important issue in all cases will be whether the school took reasonable steps to protect the student from the risk.

Excursions, In-school visits and Camps

1. An in-school visit 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.
2. Camps and excursions outside the school bring with it an increased duty of care and require the teacher to fully comply with DET guidelines, including staff:student ratio compliance. It is a teacher's responsibility to be aware of these guidelines and remain the person designated with duty of care.
3. 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.
4. RPS 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.
5. The teacher in charge will have copies of all confidential medical forms and permission notes with contact details. The important part of this is that the teacher, whilst outside of the school with students has the required information to make contact as needed.
6. The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and a first aid kit and student specific medical requirements.

Other Risks to Students

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 students is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.

REFERENCES:

- **Duty of Care DET Policy**
<http://www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare.aspx>
- **Staffing and Supervision DET Policy**
<http://www.education.vic.gov.au/school/principals/spag/safety/Pages/staffing.aspx>
- **Planning and Approval DET Policy**
<http://www.education.vic.gov.au/school/principals/spag/safety/Pages/planning.aspx>

RELATED POLICIES:

- Playground Supervision
- First Aid
- Child Safe Environment
- Working with Children Check
- Visitors to School
- Privacy
- Mandatory Reporting
- Student Engagement and Wellbeing
- Camps and Excursions

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