



## *Teesdale Primary School Policy*

### **DUTY OF CARE POLICY**

**(Ratified June 2020)**

#### **PURPOSE**

To explain the nature of the legal duties owed by teachers and school staff towards students, and to ensure staff have an understanding of their duty of care to students, and behave in a manner that doesn't compromise these legal obligations.

"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 student to succeed in a negligence claim, all of these elements must be established.

All school staff at Teesdale Primary School will be made aware of their legal responsibilities. As part of the government school principal contract, the principal is required to plan, implement and monitor arrangements to ensure the safety, security and wellbeing of students.

#### **RESPONSIBILITIES**

Whenever a student-teacher relationship exists, the teacher has a special duty of care, which also aligns with the Teesdale Primary School's Commitment to Child Safety Statement and Child Safety Code of Conduct. 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 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. It is the responsibility of the principal and staff to carry out allocated supervision and other assigned 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. 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.

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, including extra-curricular events, camps and excursions. 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.



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**The following instructions and notices apply to all staff at Teesdale Primary School.**

### **Classroom Supervision**

- It is not appropriate to leave students in the care of ancillary 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)
- In an emergency situation use the phone for the Principal or contact the teacher in the next room. (if appropriate – send another student for assistance)
- 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 a colleague's classroom, or to the Principal.

### **Movement of Children**

- Care needs to be taken in allowing students to leave the room to work in other areas of the school.
- While older students are often 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.
- Use of students as monitors outside the room during class time must only occur with the approval of the Principal
- Discretion is to be used when allowing students 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 pupils, teacher's duty of care is one of positive action.
- 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 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 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 Principal.
- Be alert and vigilant -intervene immediately if potentially dangerous behaviour is observed in the yard - enforce the school's behaviour standards and logical consequences for breaches of safety rules.
- You should always be on the move and highly visible.
- It is important that Teesdale Primary School clearly inform parents when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours.

### **Excursions, 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 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.



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- 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 that excursion and camp activities require the teacher to ensure that the venue and transport adhere to DET guidelines.
- Be aware that 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 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.
- 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.

### **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.

### **Informing Staff of the legislative liability of Duty of Care**

All staff at our school 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. (Google docs)
- 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 6.16.1 of the Victorian Government Schools Reference 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 wellbeing policy annually.

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 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



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- 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 careers 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.

### REFERENCES:

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

### REVIEW CYCLE

This policy was last updated in June 2020 and is scheduled for review in 2024.