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.” 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 preventative measures could be taken.
School authorities in breach of duty of care may be liable for injuries inflicted by one student on another, as well as for injuries sustained by student.

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:
Movelle will provide adequate supervision in the school or when children are on school activities, as well as providing safe and suitable buildings, grounds and equipment.
Apart from mandatory reporting requirements, a teacher has duty of care to protect a student from harm that is reasonably foreseeable. 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.
A teacher has greater duty of care than that of an ordinary citizen, in that a teacher is obliged to protect a student from reasonable foreseeable harm or to assist an injured student.
Movelle will clearly inform parents when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours.

Legal duty of care responsibilities include:
- Arriving to class on time and not leaving a class early
- Arriving on time to scheduled timetabled yard duty responsibilities
• Acting appropriately to protect a child who claims to be bullied
• if the teacher believes a child is being abused they must report the matter appropriately (See Mandatory Reporting Policy)
• Supervising line up of students when the bell has sounded
• Not leaving students unattended in a classroom
• Instructing students who are not wearing hats to play in the shade
• Not ignoring dangerous play
• Not leaving the school during time release without approval
• Providing adequate supervision on a school excursion

Staff members are cautioned against giving advice they are not professionally competent to give. Teachers must ensure that the advice they give is correct and where appropriate in line with the views of the school. Teachers should not give advice in those areas outside their role where they may lack expertise.

The following instructions and notices apply to all staff.

Classroom supervision
Staff must not leave the classroom unattended at any time during a lesson. 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 the students in the care of external education providers. e.g. incursions. (At law, the Duty of care cannot be delegated)
In an emergency situation use the phone for Principal or Assistant Principal or contact 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 AP or Principal. This should be accompanied by documentation and appropriate follow up. The teacher, AP or principal is to be contacted first to alert them that student is on their way.

Movement of Students.
Care needs to be taken in allowing students to leave the room to work in other areas of the school. Discretion is to be used when allowing students to visit the toilet during class time. At Movelle, children will always be accompanied by another student.

Yard Supervision
Yard supervision is an essential element in teachers’ duty of care.
Be aware:
• Students are less constrained and more prone to accident and injury than in a closely supervised classroom
• Yard duty supervision requires the teacher to fully comply with DEECD guidelines and brings with it an increased duty of care
• 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 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 be always on the move and highly visible

• At Movelle, Teachers are required to wear the orange coloured vest, carry a mobile phone, first aid bag, and in Terms 1 and 4 wear a hat

**Excursions, Incursions and Camps.**

Be aware that:

• Students are less constrained and more prone to accident and injury than in a more closely supervised classroom

• An incursion with an internal 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 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

• Excursion and camp activities require the teacher to ensure that the venue and transport adhere to DEECD 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 senior member of staff will remain at the 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 DEECD guidelines when organising an excursion, incursion or camp. All procedural steps contained in the “School Camping, Excursions and Incursions Policy and Procedure” must be followed.
**Informing staff of the legislative liability of Duty of Care.**

All staff will be informed of their legal requirements as Duty of Care will be an agenda item during staff meetings. Staff will be directed to familiarise themselves with the Student Safety section of the Victorian Government Schools Policy Advisory Guide. A copy of this document will be placed on I Drive for all staff to access.

New staff will be informed of their Duty of Care as part of their Induction program. Staff will be directed to the student wellbeing policy annually.

Reference:
Appendix 1: School Policy and Advisory Guide

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<tr>
<td>Responsible for Review</td>
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Duty of Care

Purpose of this policy

To explain the nature of the legal duties owed by teachers and school staff towards students.

Legal background

"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.

Standard of care required by schools

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.

Whenever a teacher-student relationship exists, teachers have a special duty of care. This has been expressed 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).

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 12s 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.

**Duty of care to students outside the school**

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.

- In 1977 the High Court found a school authority liable for an injury sustained by a student in the playground 15 minutes before school began for the day (*Geyer v Downs*). In that case the principal was aware that children were coming onto the grounds before school, and had instructed that children who did so were to read or talk quietly. The Court took the view that in so doing, the principal had brought the school-student relationship into existence and therefore created a duty to ensure that there was adequate supervision before school.
- In 1996, a non government school in NSW (*Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman*) was found liable for an injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. In that case, the school was aware that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. Moreover, a teacher from the primary school witnessed the incident but did not intervene. The Court found that the teacher-student relationship was still in existence at the time of the injury, and therefore the school authority had a duty of care.
- In 2001, a school in NSW (*re Graham v NSW*) was found not liable for injuries to a student with a disability who was hit by a motor vehicle when crossing a busy road a kilometre from school, when walking to school by herself. The allegation against the school was that it should have provided a bus, but the New South Wales Court of Appeal held that the school had discharged its duty by informing the parent at the start of the year that the bus service was no longer being provided, and that the parent should make appropriate arrangements.

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 (as in Graham’s case) will involve informing parents of bus arrangements and leaving it to parents to make appropriate arrangements for transporting their children to and from school.

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.

**Negligent advice: teachers**

Teachers are frequently called upon to advise students. When doing so teachers should:

- limit their advice to students to areas within their own professional competence and given in situations arising from a role specified for them by the principal
• ensure that the advice they give is correct and in line with the most recent available statements from institutions or employers. Careers teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals
• avoid giving advice in areas unrelated to their role or where they may lack expertise.

Related policies

• Personal Liability of School Employees
• SERS Insurance Claims and Settlement Process
• Volunteer Workers