



Policy Name	Duty of Care Policy
Related Policies and Legislation	Code of Conduct – Treetops Staff Working with Children (Criminal Record Checking) Act 2004 Volunteers (Protections from Liability) Act 2002 (WA) Occupational Safety and Health Act 1984 (WA) Civil Liability Act 2002 Occupiers Liability Act 1985 School Education Act (WA) Section 63(1) & 64(1) School Education Regulations 2000 (WA) Regulation 38 AISWA Duty of Care Guidelines
Policy Category	Student Wellbeing & Safety
Relevant Audience	All Treetops Community
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Person/s Responsible for Review	Treetops Administration

Duty of Care Policy

Purpose

Outlines the responsibilities of teachers, staff, volunteers & external providers in caring for the students at Treetops.

Duty of Care

The term ‘duty of care’ is a legal concept that defines the duty a person has to use reasonable care towards others in order to protect them from known or reasonably foreseeable risk of harm and/or injury. The notion of duty of care is one that is contained in most school policies and procedures.

The school has a duty to take reasonable care to ensure that it employs competent teachers and provides safe premises. The school will be vicariously liable for the actions of the teachers while they are acting within the course and scope of their duties as an employee of the school.

A teacher owes a duty to students to take reasonable care to protect them, from a known or a reasonably foreseeable risk of harm and/or injury. Discharge of this duty requires a teacher to take such proactive measures as are reasonable to prevent harm and/or injury to a student.

The notion that a school teacher is *in loco parentis* does not fully state the legal responsibility of a school, which in many respects goes beyond that of a parent. A school should not be equated with a home. Often hazards exist in a home which it would be unreasonable to allow in a school.

If a student is injured because this duty of care is breached, the parent may bring a negligence action against the school. In some circumstances, especially deliberate negligence, the teacher alone may be liable.

References:

<https://ro.ecu.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1289&context=ajte>
<https://www.education.vic.gov.au/school/principals/spag/safety/Pages/dutyofcare.aspx>

Reasonable Care

The concept of 'duty of care' is based on reasonable care. It is not a duty to ensure no harm will come to a student but that reasonable care to avoid harm being suffered is taken. What is considered reasonable care varies depending the circumstances at the time.

Listed below are some factors to consider when assessing the 'reasonableness' of the level of care required for a particular student. Schools should use these factors and any other factors applicable to the particular situation to risk assess the duty of care required:

- The student's age, experience and capabilities: The level of care will generally be greater the younger the student.
- Any physical or intellectual impairment: A student with a disability may be at greater risk of injury than a student without a disability for a particular activity. This could be due to a physical inability to safely participate in an activity or the intellectual inability to appreciate the risks involved and therefore the need to exercise caution.
- Medical condition: Particular medical conditions, including asthma, epilepsy and anaphylaxis, require special attention to ensure that students who are susceptible are not exposed to a greater risk of injury.
- Behavioural characteristics: If a student is known to behave inappropriately then the level of care increases.
- Nature of the activity and the environment in which the activity is held: School activities with a higher level of risk and held in hazardous environments require a higher level of care.
- School policy and procedures: School policies and procedures will often give guidance to the suitability of certain activities for students and the care required if they are undertaken. They must be followed.
- All activities should be risk assessed before being undertaken using the schools risk assessment procedure. Assessing the level of risk involved in any individual activity means, determine the probability of harm occurring, the degree of harm that could occur and the mitigation required to make the activity's risks acceptable.
- The supervisor's level of experience, attributes and skills: A supervisor should know, understand and be able to keep students safe in the particular environment the activity is taking place in.
- The supervisor's relationship with the students: A teacher who has a 'difficult' relationship with a student may need a different approach to their duty of care than a teacher who has a positive relationship with a student
- While duty of care responsibilities may appear to impose onerous obligations on schools and teachers, these obligations should not discourage the school from allowing students to participate in challenging or managed risk activities. Routine risk assessment strategies and efficient mitigation processes can encourage teacher participation in activities that may appear at first to be too hard to bother with.

Duty of Care: School-Based Applications

Liability in negligence cases depends upon the application of a standard of reasonableness in all the circumstances. Each case will therefore be different, based on its own particular set of facts. The examples provided in this document are therefore to be used as a guide only.

Journey to and from place at which school activity is undertaken

As a general rule, a school does not have a 'door-to-door' responsibility for students. However, a duty of care will be owed in any situation where the school assumes responsibility for students, such as where a school provides transport for students to and from a school activity, or where a school assumes responsibility for escorting students across a railway line or busy highway.

Students on school grounds before school

Where it is known that students arrive at school at a certain time (e.g. if buses start delivering students from a particular time) the responsibility of the school to provide adequate supervision for the students commences at that time.

A refusal to acknowledge the presence of students will not provide a defence against liability.

Refusing to open school gates or forcing students to remain on the street verge will not remove a school's responsibility.

If students frequently arrive at school well before the commencement of classes, the school should consider developing a roster system whereby teachers are requested to be on duty at a particular time before the start of the school day. This should be worked out in conjunction with the staff involved and P&C groups, all of whom will have to work together in this area.

Once a suitable time has been determined for it to be viable for staff to be on the premises to supervise students, that time should be widely circulated amongst the parents of the students by way of newsletter. The advice in the newsletter should state that there will be no one to supervise children at school before the set time and that the school cannot accept responsibility for students delivered to the school prior to that time.

The number of supervisors that will be required for this roster system will depend upon the age and number of students who are known to arrive prior to the commencement of the school day and upon the area to which they are directed.

Students who arrive at school early should be directed to a particular area to enable the supervisor to be able to observe exactly what is occurring. How the students should be occupied at this time is also another factor that will have to be determined by the school and the community.

Allowing for the fact that some parents will still ignore this recommendation and deliver students to school earlier than this time, these parents should be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

These suggestions may not remove the problem but at least if there was an accident at the earlier time and the school was required to defend itself, it could be possible to point to the newsletters and the interviews with parents to say that the school had done all that was reasonable in the circumstances to ensure the safety of the students.

Students on school grounds after the close of school

Where the presence of students on school grounds is known or ought to be known, the question to be asked is whether it is reasonable in the circumstances to impose responsibility on a staff member for students using the school grounds at the close of the school day. The various scenarios a school may encounter may be summarised as follows:

Students who leave school grounds and return later (e.g. in the evenings, weekends) to use the grounds

There will be no duty of care owed to students who leave the school grounds and return later to use the grounds or playground equipment (unless they return to participate in a school activity).

Students who remain on school grounds after being collected by parents

The collection of students at the end of the school day by, for example, parents will result in those parents or others collecting the students assuming responsibility for supervising them while on the school grounds or while using the playground equipment. However, this does not absolve the school from its duty of care.

Students who remain on school grounds whilst waiting for a school bus or after school care bus

The duty of care would continue to exist if students remain on school grounds and/or play on the playground equipment while waiting for a school or after-school care bus. The responsibility for providing adequate supervision will extend at least until the last bus departs the premises.

Students who remain on school grounds whilst waiting for parents to collect them

In respect of very young students or students who are otherwise unable to care for themselves, the duty of care is likely to last until the student is collected. However, it is not reasonable to expect staff members to supervise students whose parents are regularly and significantly late in collecting their children. Schools should consider reporting concerns to the Department for Community Development and/or delivering students into the care of the police if staff members regularly have to wait for significant times with students whose parents have neglected to collect them.

Students who otherwise remain on school grounds at the close of school

There should be a teacher on duty for a reasonable amount of time after the close of school to ensure that the majority of students are no longer present. Once a suitable time has been determined for it to no longer be viable for teachers to remain on the premises after school to supervise children, then that time should be widely circulated to the parents/guardians/carers of the students by way of newsletter. The advice in the newsletter should state that there will be no one to supervise students at school after the set time and that the school cannot accept responsibility for students remaining on school premises after that time. The number of supervisors who will be required for this roster system will depend upon the age and number of students who are known to remain on school premises after school and the area to which they are directed.

Students should be directed to a particular area to enable the supervisor(s) to be able to observe exactly what is occurring

Allowing for the fact that some parents will allow children to stay at school beyond this set time, these parents should be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

This may not remove the problem but at least if there was an accident after school and the school was required to defend itself it would be possible to point to the newsletters and the interviews with parents to say that the school had done all that was reasonable in the circumstances to ensure the safety of the students.

After-school sport on school grounds

A staff member who coaches a sporting team outside school hours will owe a duty to take reasonable care for the safety of the participating students if the sporting activity is an authorised school activity.

If an activity is not an authorised school activity, the staff member will be acting in a private capacity and the principle of vicarious liability will not apply. Further, the school's public liability insurance cover may not extend to privately arranged sporting activities.

The wearing of a school uniform by members of a team comprised of students of a particular school and the naming of the team by reference to a school will not necessarily convert the sporting activity to an authorised school activity. It may, however, be the case that parents and guardians may be led to believe that the activity is being organised and conducted by the school. Where the sporting activity is not an authorised school activity, the principal should advise parents and guardians that the school

assumes no responsibility for the supervision of students and for any aspect of the activity such as coaching.

Students leaving school grounds during school hours

As a general rule, a school should not allow students to leave school premises during the school day in circumstances where there is no parental permission. If a student is permitted to leave in these circumstances, the school must be satisfied that no foreseeable harm will come to them.

A school may release a student where parental permission has been given. The form of the permission should clearly state the terms upon which parents are giving permission for the student to leave premises, including the purpose for which the permission is given, the times during which students may absent themselves (for example daily or on a specified day each week) and the period for which the permission is given (for example a term).

The parent must also provide a written acknowledgement that the school cannot be held responsible for any injury that befalls the student away from the school premises or for any misconduct on the part of the student.

Having said this, the school must be satisfied that the parent is giving informed permission by advising the parent of any concerns it has for the student's safety. Moreover, if the school, having assessed the situation, considers that the student may be placed at risk if allowed to leave the school premises, then permission to leave should be refused notwithstanding that parental permission has been given. If, for example, the school becomes aware of unsatisfactory behaviour, risk related behaviour or other circumstances likely to affect the health, safety or welfare of the student, it will be justified in withdrawing permission, and should discuss these concerns with the student's parent or guardian.

The situation will be directly influenced by the age of the student. There is probably no reason why a school could not accede to a request by a mature post-compulsory student to leave the premises during free periods and breaks, provided written authority by the student's parent (assuming the student is under the age of 18) has been given. The situation would, of course, be somewhat different if the permission related to a 6 year old student leaving school premises to buy lunch at the local shopping centre, a situation in which the prudence of the parent could be held in question.

Provided that the school is satisfied on reasonable grounds that no foreseeable harm will come to a student, the Student-teacher relationship will end and a duty of care will no longer be owed once the student leaves the premises during a free period/break or for other non-School Activities, such as a doctor's appointment.

Duty of care owed by Non-Teaching Staff, Volunteers and External Providers

When non-teaching staff, volunteers and external providers agree to take personal care of students in the absence of a teacher they will owe a duty of care to the students. They must take reasonable measures to prevent harm coming to the students.

Non-teaching staff – employees of the school who work on the school premises and are not part of the teaching staff. eg Librarians, laboratory assistants, exam supervisors.

Volunteers – an adult or organisation who/which offers services for school activities, but receives no remuneration from the school for the services provided, eg parents/guardians and other relatives, community members, employers who accept students on work experience, student teachers.

External Providers – a business/individual paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity, eg. private dance teacher, Perth Zoo, AQWA, Scitech.

Non-teaching staff, volunteers (eg parents) and/or external providers are not generally personally responsible for students and do not have the same duty of care to students as do teachers.

However, in certain situations and under certain conditions teachers may delegate a proportion of their duty of care to non-teaching staff, volunteers (eg. parents) and/or external providers. In this case the non-teacher will then owe the same level of care to students as a teacher.

Before the school and/or the teacher delegate the duty of care responsibility to non-teaching staff, volunteers (eg parents) and/or external providers, it is necessary for the school and/or the teacher to ensure the following are satisfied, failure to do so could result in a breach of the school and/or the teacher's duty of care to the student:

- That the non-teaching staff, volunteers (eg parents) and/or external providers are suitable for the task being delegated.
- That the non-teaching staff, volunteers (eg parents) and/or external providers involved are covered by either the school's insurance or have in place their own adequate insurance cover.
- That the non-teaching staff, volunteers (eg parents) and/or external providers agree to assume this personal duty of care for the students. They have the right to refuse unless it is part of their normal duties.
- That the teacher has provided the non-teaching staff, volunteers (eg parents) and/or external providers with clear instructions as to the level of care required.

https://www.lawhandbook.org.au/2018_04_08_02_duty_of_care