

| Policy Name                             | Duty of Care Policy   |
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| <b>Related Policies and Legislation</b> | Code of Conduct – Treetops Staff<br>Work Health & Safety P&P<br>Volunteering Within the School P&P<br><i>Working with Children (Criminal Record Checking) Act 2004</i><br><i>Volunteers (Protections from Liability) Act 2002 (WA)</i><br><i>Work Health and Safety Act 2020 (WA)</i><br><i>Civil Liability Act 2002</i><br><i>Occupiers Liability Act 1985</i><br><i>School Education Act (WA) Section 63(1) &amp; 64(1)</i><br><i>School Education Regulations 2000 (WA) Regulation 38</i><br>AISWA Duty of Care Guidelines |
| <b>Policy Category</b>                  | Student Wellbeing & Safety  |
| <b>Relevant Audience</b>                | All Treetops Community  |
| <b>Date of Issue / Last Revision</b>    | 31 August 2010<br>23 May 2019<br>05 March 2020<br><b>23 February 2023</b>   |
| <b>Date Set for Review</b>              | <b>February 2027</b>  |
| <b>Person/s Responsible for Review</b>  | Treetops Administration   |

## Duty of Care Policy

### Purpose

Outlines the responsibilities of teachers, staff, volunteers, and 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 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. In some circumstances, especially deliberate negligence, the teacher alone may be liable.

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.

## **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:

- 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 school's risk assessment procedures. Assessing the level of risk involved in any individual activity means determining 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

## **Duty of Care Owed by Teaching Staff**

A teacher's duty of care responsibility is automatic, arising from the establishment of the teacher/student relationship. Teachers must take reasonable care to make sure their acts or omissions do not cause reasonably foreseeable injury to their students.

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.

A teacher's duty of care is not delegated to them by the parent but by the Crown and this is the reason why a teacher is expected to provide a higher standard of care than a reasonable parent. A teacher must provide a standard of care that is reasonable for a teacher to provide.

A school's duty of care is higher than a teacher's. A school may be vicariously liable for a teacher's actions. However, in some cases the individual teacher may be liable, especially in the case of criminal conduct.

As employees of the school, teaching staff have a duty of care to the students in their charge to take all reasonable steps to protect them from risks of harm that can be reasonably predicted. The standard of care that is required, such as the degree of supervision, needs to be commensurate with the students' maturity and ability.

A teacher's duty of care to students is a non-delegable duty and applies at all times throughout the school day, during incursions and excursions, camps, playground duty periods, and during all activities and functions conducted or arranged by the school. The duty encompasses a wide range of matters, including (but not limited to):

- Being aware of, and implementing, all school policies affecting student safety and welfare;
- Providing adequate supervision;
  - not leaving students unsupervised either within or outside of class
  - being punctual to class and any allocated supervision
  - during playground duty actively supervising designated areas, being vigilant and constantly moving around
  - At after school activities, remaining with students until all students have been collected
- Maintaining a safe classroom environment;
- Ensuring grounds, premises, and equipment are safe for students to use;
- Not exposing students, or anyone else at their workplace, to any risk or hazard;
- Ensuring appropriate attire and OH&S wear appropriate to activities;
- Implementing the school's strategies to prevent bullying from occurring in the school;
- Looking out for bullying or any other form of discriminatory behaviour, and reporting incidents appropriately;
- Providing appropriate medical assistance (if competent to do so), or seeking assistance from a medically trained person to aid a student who is injured or becomes sick at school.

As a school employee, staff hold a position of trust and are accountable for their actions. Staff failing to provide adequate duty of care, may breach the school's 'Code of Conduct'. Consequences for any breach are detailed in the school's 'Code of Conduct'.

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

Non-teaching staff, volunteers (e.g. 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.

*Non-teaching staff* – employees of the school who work on the school premises and are not part of the teaching staff. e.g. education assistants, administration staff, grounds and maintenance staff, librarians, laboratory assistants, exam supervisors etc.

*Volunteers* – an adult or organisation who/which offers services for school activities, but receives no remuneration from the school for the services provided, e.g. 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, e.g. private music teacher, Perth Zoo, AQWA, Scitech.

However, in certain situations and under certain conditions, the Principal may delegate a proportion of a teacher's duty of care to non-teaching staff, volunteers (e.g. 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 Principal (or their delegate) delegates the duty of care responsibility to non-teaching staff, volunteers (e.g. parents) and/or external providers, it is necessary for the Principal (or their delegate) to ensure the following are satisfied, and 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 (e.g. parents) and/or external providers are suitable for the task being delegated.

- That the non-teaching staff, volunteers (e.g. 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 (e.g. 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 principal and teacher have provided the non-teaching staff, volunteers (e.g. parents) and/or external providers with clear instructions as to the level of care required.

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.

### **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*

The 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 and after school*

The school is open from 8:20am. The school grounds are closed from 3:40pm. Students are unable to be supervised before or after these times. This information is provided to parents in the school's Parent Handbook, and reminders are issued to parents via newsletters during the year as required.

There are staff rostered for supervision duty from 8.20am until classes start in the morning, and until 3.40pm after classes finish in the afternoon. Students are directed to particular area of the school grounds to enable the supervisor to be able to observe exactly what is occurring.

Parents who continue to deliver students to school earlier than the opening time, or are regularly and significantly late in collecting their children will be contacted individually and asked to discuss the matter with the Principal.

#### *Students who remain on school grounds after being collected by parents*

Once students have been picked up or collected by parents at the end of the school day, parents are required to keep their children in their care and supervision. Parents are advised that students cannot remain after school in the school grounds if they are not actively in the care and supervision of a parent/guardian.

#### *Students who remain on school grounds whilst waiting for an after school care bus*

Students waiting for an after school care bus will wait at the school gate, under the supervision of the staff rostered for after school supervision duty, until they are collected by the after school care bus and the bus has departed.

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

Children's House students are not permitted to leave Children's House until collected by a parent or other nominated adult. Primary students (Years 1-6) are either collected from the classroom or, with permission, are released to meet their parents on the school grounds or at the school gate for pick up. Karri (Years 5-6) and Secondary students are able, with permission, to leave the school grounds at the end of the day. These students cannot remain after school in the school grounds.

All families must make appropriate arrangements for their children to be picked up at the end of the school day. This is expected to be within 5 minutes of the advertised end of the school day.

it is not reasonable to expect staff members to supervise students whose parents are regularly and significantly late in collecting their children.

In the event that a student is not picked up, the staff will supervise them for up to 10 minutes, at which time if they are still remaining, they will be taken down to wait in the office. The school will attempt to call the parents.

In the event that a child is left at school beyond 30 minutes, see the schools 'Children Left at School Policy'.

#### After-school sport on school grounds

A staff member who provides after school sport 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.

#### Students leaving school grounds during school hours

The school does 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.

The 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).

#### 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.