

Oatlands Primary School

DUTY OF CARE POLICY

Purpose

The purpose of this policy is to explain to our school community the non-delegable duty of care obligations that all staff at Oatlands Primary School owe to our students and members of the school community who visit and use the school premises. 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.

Policy

"Duty of care" is a legal obligation that requires schools to take reasonable steps to reduce the risk of reasonably foreseeable harm, which can include personal injury (physical or psychological) or damage to property. 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.

The reasonable steps that our school may decide to take in response to a potential risk or hazard will depend on the circumstances of the risk.

This will involve consideration of the following factors:

- identifying the risk of harm
- the probability that the harm would occur if care were not taken
- the likely seriousness of the harm
- the social utility of the activity that creates the risk of harm
- the burden of taking precautions to avoid the risk of harm

The principal is responsible for making and administering such arrangements for supervision as are necessary according to the circumstances and teachers are responsible for carrying out their assigned supervisory 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.

Our school has developed policies and procedures to manage common risks in the school environment, including:

- Yard duty and Supervision
- Bullying Prevention
- Camps and Excursions
- First Aid
- Grounds Maintenance
- Student Private Property
- Child Safe Standards
- External Providers

- Emergency Management
- Volunteers
- Visitors
- Working with Children and Suitability Checks
- Mandatory Reporting
- Occupational Health and Safety

Staff at our school understand that school activities involve different levels of risk and that particular care may need to be taken to support younger students or students with additional needs. Our school also understands that it is responsible for ensuring that the school premises are kept in good repair and will take reasonable steps to reduce the risk of members of our community suffering injury or damage because of the state of the premises.

Staff at our school acknowledge that, as our duty of care is non-delegable, we are also required to take reasonable steps to reduce the risk of reasonably foreseeable harm when external providers have been engaged to plan for or conduct an activity involving our students. Our *Visitors and Volunteers Policy* and *Excursions/Incursions Policy* include information on the safety and care of our students when engaged with external providers.

Oatlands Primary School has zero tolerance for child abuse and is committed to meeting the requirements of Ministerial Order 870 and the Child Safe Standards. Mandatory Reporting is vital to ensuring that any instances of child abuse are reported according to the Child Safe Standards. The Victorian Government believes it is important that organisations are subject to a well-defined legal duty to prevent child abuse within organisations. A new statutory duty of care under the *Wrongs Amendment (Organisational Child Abuse) Act 2017* (see Part XIII of *Wrongs Act 1958*) has therefore been created to ensure there is a clear legal duty placed on organisations to take reasonable steps to minimise the risk of child abuse, perpetrated by organisational representatives.

IMPLEMENTATION

Principals and teachers are held to a high standard of care in relation to students. The duty requires principals and teachers to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- ensuring the school complies with the seven Child Safe Standards
- 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
- managing employee recruitment, conduct and performance

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

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.

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/pupil relationship.

Quite apart from mandatory reporting requirements, a teacher has a concurrent duty of care to protect a student from harm that is reasonably foreseeable. A breach of this duty of care may lead to legal action being taken against the individual teacher or teachers concerned. 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.

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 class or leaving a class early
- 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
- 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 year level coordinator or subject teacher) specified for them by the principal. Teachers must ensure that the advice they give is correct. Teachers should not give advice in areas outside those related to their role where they may lack expertise.

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. Staff are responsible for their students at all times.

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 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 Assistant 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 Assistant Principal or Principal. This should be accompanied by documentation and appropriate follow up. The teacher, Principal or Assistant Principal **is to be contacted first** to alert them that the 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.
- Use of students as monitors outside the room during class time must only occur with the approval of the Principal or Assistant 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 students, teacher's duty of care is one of positive action.
- Be aware that students 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 Department of Education and Training 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 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 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 always be on the move and highly visible.

- Yard duty teachers need to be vigilant for both student inappropriate behaviour and vigilant for inappropriate adult behaviour as well.
- Students must be supervised for a minimum of 15 minutes before and after school as per the Yard Duty Roster.

Excursions, Incursions and Camps

- Be aware that students 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.
- 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 Outdoor Education/Camp Policy and the Excursion/Incursion Policy and Procedure outlines must also be followed.

Oatlands Primary School Staff are required to ensure that we meet the requirements of Ministerial Order 870 and the Child Safe Standards which applies to all staff, contractors, volunteers and any other member of the school community involved in child-related work with students of Oatlands Primary School.

Informing Staff of the Legislative Liability of Duty of Care

All staff will be informed of their legal requirement via:

- All staff will be directed to read this document at the first staff meeting at the commencement of the school year, and this policy will be on the intranet.
- 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 Student Safety of the Victorian Government Schools Policy Advisory 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.

Reportable conduct scheme

A Victorian reportable conduct scheme commenced operation on 1 July 2017, and it is administered by the Commission for Children and Young People.

The scheme requires organisations that have a high level of responsibility for children to report allegations of child abuse and child related misconduct to the Commission for Children and Young People. Central oversight of how organisations respond to allegations of reportable conduct helps embed a child-safe culture across all organisations.

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

EVALUATION:

Date reviewed and approved by School Council	February 2022
Due date for next review by School Council	February 2024

