



DUTY OF CARE POLICY

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.

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 preventive measures could be taken.

School authorities in breach of the duty of care 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. For example, the principal is responsible for making and administering such arrangements for supervision as are necessary according to the circumstances in each school, 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.

Guidelines:

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.

The duty of care:

- requires that reasonable measures are taken to protect all students from reasonably foreseeable risks of injury
- owes a duty to take reasonable care that any student (and other persons) on the premises will not be injured or damaged by reason of the state of the premises, including things done or omitted to be done to the premises.
- owes a duty to take reasonable precautions to prevent the abuse of a child by an individual associated with the organisation while the child is under the care, supervision or authority of the organisation.
- requires that different and sometimes greater measures may need to be taken for vulnerable students, younger students or students with disabilities.

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 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
- 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 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.

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. Consider for example, if a live power line came down outside the school, no emergency workers had arrived, and children are about to be dismissed to walk home. No school would allow the children to walk out to that danger unsupervised.
- There will be a number of other situations where the school will be under a duty to take reasonable steps. In some instances, the school's control over the activity may require it to take more active measures to satisfy the requirement that it take reasonable steps. In other instances, the school may not control the activity, and the reasonable measures available to it will be limited

Student Supervision

- Staff should not leave the classroom unattended at any time during a lesson, except where clear and explicit instructions are given and the normal sight lines of supervision are available.
- 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)
- 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 the Principal or vice-Principal.
- Be alert and vigilant -intervene immediately if potentially dangerous behaviour is observed in the school - enforce behaviour standards and logical consequences for breaches of safety rules.



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 an increased duty of care. It is a teacher's responsibility to remain the person designated with duty of care.
- 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.
- 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.

Implementation

In order for the school to discharge its Duty of Care risks are identified and appropriate action is undertaken to manage or remove the risk. All identified risks are to be reported immediately to the Principal.

Policies and procedures that form part of and are not exclusive to the Duty of Care are:

- Supervision policies
- Codes of conduct
- Student Medical Care and First Aid
- Risk assessments and Risk Register
- Child Safe Standards
- Mandatory Reporting Policy and Procedures



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 available on the school website.

New staff will be informed of their Duty of Care as part of their induction. Duty of Care will be an agenda item at staff meetings.

Policy Endorsement

This Policy has been endorsed by the FCS Governing Body.

Date: June 2022

Review Date: June 2023

Review Cycle. Every 12 months.

Exceptions: This Policy may be reviewed earlier than the date stated subject to circumstance.