

DUTY OF CARE POLICY

*The Currajong School takes a zero-tolerance approach to child abuse and is fully committed to ensuring that its strategies, policies, procedures and practices meet all **Child Safety Standards as specified in Ministerial Order No. 870 (2015)***

1. PURPOSE OF THIS POLICY

- i. To ensure that staff have an understanding of their duty of care to students and undertake their duties in a manner that does not compromise their legal obligations
- ii. To ensure that The Currajong School complies with all relevant legislation, policy and guidelines

2. 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:

- i. a duty of care was owed to the person harmed at the time of the injury
- ii. the risk of injury was foreseeable
- iii. the likelihood of the injury occurring was more than insignificant
- iv. there was a breach of the duty of care or a failure to observe a reasonable standard of care
- v. 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.

3. STANDARD OF CARE REQUIRED BY SCHOOLS

Principals and teachers are held to a high standard of care in relation to students and are required to take all reasonable steps to reduce risk.

This duty encompasses a wide range of matters, including:

- i. providing an adequate system of supervision
- ii. providing suitable and safe premises
- iii. implementing strategies to prevent bullying from occurring
- iv. rendering medical assistance (if competent to do so) to, or seeking assistance from a medically trained person for, a student who is injured or becomes sick at school
- v. acting on a suspicion of physical, sexual or emotional abuse or neglect i.e. Child Safe legislation requires school staff to report to the Principal instances of student disclosure or signs of abuse or neglect
- vi. managing employee recruitment, conduct and performance

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

Whenever a staff member-student relationship exists, teachers have a special duty of care. This has been expressed as: 'a staff member is to take such measures as are reasonable in the circumstances to protect a student under the staff member's charge from risks of injury that the staff member should reasonably have foreseen.'

The nature and extent of the duty will vary according to circumstances e.g. the standard of care required will be higher when taking a group of preps for swimming lessons than when teaching a group of older students in a 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:

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

4. DUTY OF CARE TO STUDENTS OUTSIDE THE SCHOOL

A number of cases have established that, in some circumstances, a school's duty will extend beyond school hours and outside the 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*.

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.

There will be other situations in which schools will be under a duty to take reasonable steps e.g. a known bully on public transport 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.

5. IMPLEMENTATION

The Principal should ensure that staff members have an understanding of their duty of care to students as it applies to classroom supervision, movement of students, yard supervision, camps and excursions, first aid and student health care needs, and medication. Whilst each case regarding a staff member'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 staff member has failed to meet their legal duty of care responsibilities to their students:

- arriving late to scheduled yard duty responsibilities
- failing to remain in the designated area until the end of the break or until handing over to another staff member
- using yard duty time to have discussions with colleagues or others
- failing to act appropriately to protect a student claiming to be bullied
- believing that a child is being abused but failing to report
- being late to supervise the line-up of students after the bell has sounded
- failing to instruct a student who is not wearing a hat to play in the shade
- ignoring dangerous or inappropriate play
- leaving the school during time release without approval
- inadequate supervision on a school excursion or incursion
- leaving students unattended in the classroom or elsewhere

Teachers and other staff on playground duty must be vigilant and highly visible to students and avoid being distracted from the task. (Staff on duty will be required to wear a high-vis vest when on duty so students can easily identify who is on duty. If a situation develops which has the potential to be dangerous, staff response to the situation should be immediate.

6. PROTECTION FROM HARM

All staff owe a duty to take reasonable care for the safety and welfare of students whilst students are involved in school activities or are present for the purposes of a school activity. The duty is to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

In discharging their duty of care responsibilities, teaching staff must exercise their professional judgement to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students' independence and maximising learning opportunities.

When non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

7. ASSESSING RISK

When assessing the risk involved in a school activity, consideration must be given to the following factors:

- i. The probability of the risk occurring: What is the likelihood of harm being suffered in the circumstances? Is it reasonably probable or so improbable as to be scarcely worth taking into account?
- ii. The magnitude of the risk: How serious may the consequences be if the risk is run and harm results? Are the potential consequences too great to justify running the risk?
- iii. The expense, difficulty and inconvenience involved in alleviating the risk.

What is to be gained by running the risk in order to undertake the school activity? What is to be lost if it is not undertaken? What alternatives are reasonably available, and with what risks or other disadvantages are they attended? How easy is it to take precautions against the risk? The easier it is to take precautions, the greater the obligation to take those precautions.

8. REASONABLE CARE

The duty owed to students is not a duty to ensure that no harm will ever occur, but rather a duty to take reasonable care to avoid harm being suffered. What constitutes reasonable care will vary according to the circumstances, but the following factors must be taken into consideration in assessing the 'reasonableness' of the level of care required for a particular student:

- i. The student's age, experience and capabilities

A student with a disability is generally exposed to a higher level of risk of injury than a student without a disability. This may be because the student with a disability suffers from an impairment of motor skills or physical coordination, a lack of inhibition or control, or it may be because the student has a limited appreciation of the possibility of danger. Where the disability is such as to increase the risk inherent in undertaking a school activity, then appropriate precautions must be taken.

- ii. Medical condition: Where students are afflicted by particular medical conditions, for example, haemophilia, asthma, a heart condition, brittle bones or epilepsy, special care must be taken to protect such students if their condition is known or ought to be known and exposes them to a special risk of injury
- iii. Behavioural characteristics: The level of care is increased in the case of students who are known to behave in a manner that increases the risk of injury
- iv. The nature of the school activity: Increased care is required in relation to school activities with an inherently high level of risk of injury e.g. adventure activities
- v. The nature of the environment in which a school activity is to be undertaken: Increased care is required when students are placed in hazardous environments in which the potential risks of injury-related incidents are high
- vi. Any conflicting responsibilities that the school or staff member may have
- vii. Normal practices within the school and its policies and procedures

9. TEACHING STAFF

Courts act upon the maxim "ignorance of the law is no excuse". The teacher's duty 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 may choose to do nothing in a similar situation.

Teaching staff must care or provide for the care of students whilst students are involved in school activities or present for the purpose of school activities.

The duty of care owed by a member of the teaching staff to a student automatically arises out of the teacher-student relationship. Such a relationship will exist whenever and wherever a student is involved in a school activity or a student is present for the purposes of a school activity.

- i. In the event of an accident involving a student or member of the public, a written report of all the circumstances, and details of all witnesses, including minors, should be entered in the Accident Register and endorsed by the Principal
- ii. The approval of the Principal should be sought for all activities.
- iii. **Students should at no time be left without supervision.**

Teachers may be called upon to advise students and if so should:

- i. limit their advice to students to areas within their own professional competence and in situations arising from a role specified for them by the Principal
- ii. ensure that the advice they give is correct and in line with the most recent information available

- iii. avoid giving advice in areas unrelated to their role or where they may lack expertise

10. NON-TEACHING STAFF

In some circumstances a member of the teaching staff may entrust the care of students to a member of the non-teaching staff, a volunteer, an external provider or a member of the teaching staff from another school.

When deciding whether a member of the non-teaching staff, an external provider or a volunteer might personally care for students (without a member of the teaching staff also being present), teaching staff must satisfy themselves that the person is suitable for the task being assigned.

Teaching staff may breach their duty of care if reasonable care is not exercised in choosing an appropriate person to care for students. All non-teaching staff employed at The Currajong School are employed on a capacity to provide appropriate care for all students.

The Principal will confirm that all employees, volunteers, visitors and external providers in child related work hold a valid Working with Children Check.

When non-teaching staff, external providers and volunteers agree to personally care for students (without a member of the teaching staff also being present), teaching staff must provide them with clear instructions as to the level of care required. The expectation of non-teaching staff employed by The Currajong School is clearly outlined in the role descriptions and staff expectations.

A member of the non-teaching staff may have limited scope to refuse a request from a member of the teaching staff to personally care for students if the request relates to a task he or she is required to perform as part of his or her normal duties.

If non-teaching staff, volunteers and external providers agree to perform tasks that require them to personally care for students (e.g. supervise students without a member of the teaching staff also being present), they will owe the same duty of care to those students as the duty owed by teaching staff. In other words, they will be required to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

11. INFORMING STAFF OF LEGAL REQUIREMENTS

All staff members will be informed of their legal requirements re Duty of Care:

- i. A copy of this document will be provided to all staff members at the first staff meeting of the school year. In addition, it will be available on the staff server and on the school website.

- ii. New staff members will be informed of their Duty of Care as part of the school's induction program.
- iii. Staff will complete a risk assessment including duty of care when completing planning for excursions.
- iv. Duty of Care will be an agenda item as part of OHS at staff briefings.
- v. Staff should refer to additional school policies which relate to Duty of Care including:

Child Safe Policies, Adventure Activities, Anaphylaxis, Codes of Conduct, eSmart, Excursions & OffSite Activities, First Aid, Management of Critical Incidents, Medication Management, On-Site Supervision of Students, Playground Equipment, Risk Assessment Checklist, SunSmart, Swimming Program, Visitors.

References:

- Vic DET: [School Policy and Advisory Guide – Duty of Care](#)
- Vic DET: [Legal Duty of Care](#)
- The Education Act
- Australian Institute for Teaching and School Leadership

EVALUATION

This policy will be reviewed as per our three-year review cycle or more often if necessary due to changes in regulations or circumstances.

Approval date:	Approved by:	Next review:
October 2021	School Board	October 2024



The Currajong School acknowledges the traditional owners of this country throughout Australia and their continuing connection to land and community. We pay our respects to them and their cultures and to the Elders past, present and emerging.