DUTY OF CARE POLICY

(Child Safe Standard 6)

Background

All government school staff will be made aware of their legal responsibilities. As part of the government school principal contract, government school principals are required to plan, implement and monitor arrangements to ensure the safety, security and wellbeing of students. Creating safe places for children to fully and actively participate in the life of the community benefits everyone. Wonthaggi Primary School ensures that the children in its care are protected to the best of its ability and in line with their duty of care and the compulsory Child Safe standards. These Child Safe Standards are compulsory for all organisations providing services to children, and aim to drive cultural change in organisations so that protecting all children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers. This will assist organisations to:

- prevent child abuse
- encourage reporting of any abuse that does occur
- improve responses to any allegations of child abuse
- The Child Safe Standards also strongly promote the safety of Aboriginal children; children from culturally and/or linguistically diverse backgrounds and the safety of children with a disability.

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." (*Richards v State of Victoria* (1969) VR 136 at p. 141) 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. This duty extends to intervention in single-sex areas if need be by a teacher of the other gender.

Rationale

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.

Aims

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.

Implementation

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 or camp

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 careers teacher, year level coordinator or subject teacher) 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

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 primary 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. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. In other instances, the school may not control the activity, and the reasonable measures available to it will be limited. For example, fights at a local train or bus stop between students from rival schools may involve informing the police, contacting the other school to implement preventative measures, and notices to parents and students.

Staff are responsible for their students at all times.

The following instructions and notices **apply to all staff.**

Classroom Supervision:

Teachers 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, voluntary 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 or by following the school's Student Behaviour Management Plan. Any action taken should be accompanied by documentation and appropriate follow up.

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 DET 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 school 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.

Excursions, Incursions and Camps: *(also refer to comprehensive policy for each)*

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 Department of Education and Training (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 School camping, excursions and incursions Policy and Procedure outlines must also be followed.

Informing Staff of the legislative liability of Duty of Care:

All staff will be informed of their legal requirement via:

- 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 placed on the intra
- 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

Communication:

This policy will be communicated to our school community in the following ways:

- Available publicly on our school's website
- Included in induction processes for relevant staff
- Included in our staff handbook
- Discussed in an annual staff briefing/meeting
- Made available in hard copy from school administration upon request

Policy Review and Approval:

Policy last reviewed	March 2023
Approved by	Principal
Next scheduled review date	March 2027