Duty of Care Policy

Purpose:	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. The purpose of this policy is to ensure that Teachers have an understanding of their duty of care to Students, and behave in a manner that does not compromise these legal obligations.
Scope:	Teachers
Implemented by:	Principal
Approved by:	Fitra Board
Effective Date:	May 2024
Review Date:	December 2026

Background

All Fitra Community School (Fitra) Teachers will be made aware of their legal responsibilities. Schools 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. The 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, Teachers 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 requires that particular attention be given to the child safety needs of students who present with characteristics that make them more at risk or vulnerable, whether that be their race, place of origin, family circumstances, identity or ability.

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.

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
- leaving Students unattended in the classroom or learning area (gym, art-room, music room , library etc). Teachers must maintain a direct line of sight to children
- failing to instruct a Student who is not wearing a hat to play in the shade
- ignoring dangerous play
- inadequate supervision on a school excursion

Teachers 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. 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 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 to 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.

Teachers are responsible for their Students at all times.

Teachers are reminded to have regard to the following for guidance on how to go about meeting their duty of care obligations.

- Child Safety Policy
- Behaviour Management Policy
- Restraint of Students Policy
- Bullying & Harassment Policy
- Mandatory Reporting Policy
- Other Child Safety Reporting Obligations Policy
- Reportable Conduct Policy
- First Aid Policy
- Anaphylaxis Management Policy
- Student Welfare Policy
- Offsite Supervision Policy
- Onsite Supervision Policy
- Internet Policy
- Occupational Health & Safety Policy
- Visitor & External Provider Policy

Noting however that nothing in the above mentioned policies is intended in any way to limit the general duty of care that a Teacher owes to their Students at law, as set out in this policy.

Young Students and Students with Disability

Teachers are advised that greater measures other than those mentioned in this policy and the related policies noted below may need to be taken for younger Students or Students with disabilities. Where a Teacher considers that they may have a Student with higher than normal needs, the Teacher should discuss the Student with the Principal in order to determine a duty of care plan with respect to that particular Student.

Premises

The school owes a duty to take reasonable care that any Student (and other person) on the premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises.

The Principal is accountable for undertaking a risk assessment of the premises and implementing controls to mitigate risks identified.

The Principal is accountable for ensuring that the premises are adequately maintained.

Teachers must report any risks and hazards identified in the premises to the Principal (via Email) for further action with the Principal.

Individuals associated with the organisation

The school 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.

The Principal is accountable for ensuring that appropriate checks, including Working with Children Checks (where appropriate and required by law), are undertaken in respect of individuals associated with the organisation. Further the Principal should ensure that the processes outlined in the school's Child Safety Policy are followed in order to minimise the risk of child abuse by individuals associated with the organisation.

The Principal is accountable for structuring activities in such a way so as to reduce the likelihood of a child being abused by an individual associated with the organisation.

Informing Teachers of their Duty of Care Obligations At Law

All Teachers will be informed of their legal obligations through:

- New Teachers being informed of their Duty of Care obligations as part of their induction
- Duty of Care being an agenda item at staff meetings.
- Teachers completing a risk assessment that considers Duty of Care when planning for camps, excursions and incursions.

Related Documentation

Fitra philosophy

Student Wellbeing Hub website: https://www.Studentwellbeinghub.edu.au/

Related Policies

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