



## Glendal Primary School Duty of Care Policy

### Rationale

This policy assists school staff to understand how to meet their legal duty of care to students. 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.

### Aim

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.

### Guidelines

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.

- All staff working with students owe a duty of care to those students.
- All staff must take reasonable steps to reduce the risk of reasonably foreseeable harm to students.
- All staff must take reasonable precautions to minimise the risk of child abuse by an individual associated with the school.
- The requirement to take reasonable steps to reduce the risk of reasonably foreseeable harm, continues even when another party is involved (for example, a third party providing services for an excursion or school camp).
- In some circumstances, a school’s duty of care will extend beyond school hours and outside of school grounds.
- Principals of Victorian government schools and DET staff can seek legal advice about their particular circumstances from the Department’s Legal Division on [03 9637 3146](tel:0396373146) or [legal.services@education.vic.gov.au](mailto:legal.services@education.vic.gov.au)

This duty of care is non-delegable, meaning that it cannot be assigned to another party. However, this does not mean that only one person holds a duty of care to a particular student at any one time. Multiple staff may have a duty of care to the same student, with differing responsibilities and roles to play in relation to the school discharging its overall duty of care. The precise scope of the each staff member’s duty of care may be different.

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.

The Principal or an Assistant Principal of Glendal Primary School will allocate responsibilities to different staff members. Teachers are responsible for carrying out their assigned supervision duties in such a way that student 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.

### Implementation

School staff have a duty of care in relation to students. Principals, teachers and other staff working with students must take reasonable steps to minimise the risk of reasonably foreseeable harm by:

- providing suitable and safe premises
- providing an adequate system of student supervision
- undertaking risk assessments for school activities and events
- implementing strategies to prevent reasonably foreseeable injuries, whether physical or psychological, to students (including injuries suffered as a result of bullying)
- ensuring that appropriate medical assistance is provided to a sick or injured student
- ensuring the school complies with the Child Safe Standards
- taking other reasonable precautions to minimise the risk of child abuse by an individual associated with the school
- implementing relevant Department and local school policies

- managing employee recruitment, conduct and performance.

A teacher's duty of care is not confined to the geographic area of the school, 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 (8:45am – 3:45pm). 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. 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.

Staff members must ensure that the advice they give is correct and, where appropriate, in line with the most recent available statements from the Department of Education (DET) and/or the Principal.

Staff members are 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 staff member's own professional competence.

### **Students Requiring Additional Support**

Sometimes students will require additional support, such as students with disability or other additional needs. In these cases, the Principal or delegate will ensure arrangements are made as required. This may include on yard duty, in the classroom, or during school activities.

### **Risks to Students Outside the School Environment**

In some circumstances, the duty of care owed by school staff will extend beyond school hours and outside of school grounds. Whether the duty extends outside of school hours or outside school grounds will depend on all the circumstances of each individual case, and the school staff members' knowledge of any reasonably foreseeable risks of injury.

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.

### **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 made available to each member of staff.
- New staff will be informed of their Duty of Care as part of the school's Induction Program.
- Staff will complete a risk assessment including duty of care when completing planning for camps, excursions and in-school visits.
- Staff will be directed to the student wellbeing and engagement policies annually.

### **Evaluation**

This policy was reviewed on 9<sup>th</sup> August, 2021. It will be reviewed every three years, as part of the school's review cycle.

### **References**

<https://www2.education.vic.gov.au/pal/duty-of-care/policy?Redirect=1>