



Herne Hill Primary School


Policy Title: DUTY OF CARE POLICY

Date Approved:	June 2023	Review Date:	June 2026
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Approved by

School Council

Principal

 <p>Interpreter</p>	<p>Help for non-English speakers</p> <p>If you need help to understand the information in this policy, please contact</p> <p>0352784117</p>
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STATEMENT OF PURPOSE:

To explain the nature of the legal duties owed by teachers and school staff towards students. Principals and staff are held to a high standard of care in relation to students. The duty requires principals and staff to take all reasonable steps to reduce risk, including:

- provision of suitable and safe premises
- provision of an adequate system of supervision
- implementation of strategies to prevent bullying
- ensuring that medical assistance is provided to a sick or injured student.

POLICY

“Duty of care” is a legal obligation that requires schools to take reasonable steps to reduce the risk of reasonably foreseeable harm, which can include personal injury (physical or psychological) or damage to property. The reasonable steps that our school may decide to take in response to a potential risk or hazard will depend on the circumstances of the risk.

Our school has developed policies and procedures to manage common risks in the school environment, including:

Anaphylaxis Bullying Prevention Camps and Excursions (including local excursions) Child Safe Standards Child Safety Responding and Reporting Obligations (including Mandatory Reporting) Complaints Critical Incident Planning Digital Learning (Internet, Social Media and Digital Devices) — previously called Digital Technologies Emergency Management	First Aid (includes arrangements for ill students) Health Care Needs Medication Occupational Health and Safety Student Wellbeing and Engagement Visitors Volunteers Yard Duty and Supervision Working with Children and Suitability Checks Mandatory Reporting Occupational Health and Safety
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Our school acknowledges we are required 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.

Staff at our school understand that school activities involve different levels of risk and that particular care may need to be taken to support younger students or students with additional needs. Our school also understands that it is responsible for ensuring that the school premises are kept in good repair and will take reasonable steps to reduce the risk of members of our community suffering injury or damage because of the state of the premises.

- School staff, parents, carers and students are encouraged to speak to the principal to raise any concerns about risks or hazards at our school, or our duty of care obligations.

External Providers

- Staff at our school acknowledge that, as our duty of care is non-delegable, we are also required to take reasonable steps to reduce the risk of reasonably foreseeable harm when external providers have been engaged to plan for or conduct an activity involving our students. Our *Visitors Policy* and *Camps and Excursions Policy* include information on the safety and care of our students when engaged with external providers.

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.

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 staff member’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, staff have 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 staff member/s concerned. A breach of this duty of care will be established if staff 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.

Staff’s duty of care is greater than that of the ordinary citizen in that staff are 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 report to the “no hats” designated area
- ignoring dangerous play
- leaving the school during time release without approval
- inadequate supervision on a school incursion, excursion and 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 unit leader, member of the leadership team, member of student wellbeing team) specified for them by the principal.

Staff must ensure that the advice they give is correct and, where appropriate, in line with the most recent available statements from institutions or employers. Staff 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 staff member’s duty of care does not start nor end at precise times during the day. The approach generally taken is that this 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.

While students are generally free to move around the buildings and work independently in break out spaces and designated study areas they must be under (indirect) adult supervision at all times.

Staff are responsible for their students at all times.

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

Classroom Supervision

Staff 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, 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, Assistant Principal, Office staff 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 or phone communication to a colleague’s classroom, or to the Assistant Principal or Principal. This should be accompanied by documentation and appropriate follow up. The teacher, Principal or Assistant Principal **is to be contacted first** to alert them that the student is on their way.

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 or the Library 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 the school procedures 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 Principal or 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, **wearing a high visibility vest**.

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 the teacher to fully comply with 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, including student medications.

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:-

Information provided at the first staff meeting at the commencement of the school year, and accessible at all times on school Shared Drive.

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 incursions.

all Department policies relating to the care, health, safety and wellbeing of students including:

- [Bullying Prevention and Response](#)
- [Child Safe Standards](#)
- [Child Protection and Child Safe Standards \(PROTECT\)](#)
- [Excursions](#)
- [International Student Program \(ISP\)](#)
- [Legal Claims, Subpoenas, Summonses and Other Legal Documents](#)
- [Risk Management — Schools](#)
- [Supervision of Students](#)
- [Volunteers in Schools](#)

Other policies relevant to duty of care include:

- [Insurance for Schools](#)
- [Personal Liability of School Employees](#)
- [School Council — Liability and Legal Proceedings](#)

Related legislation

- [Wrongs Act 1958 \(Vic\)](#)

COMMUNICATION

- Made available in transition and enrolment packs
- Made available in hard copy from school administration office upon request.