

# PENSHURST PRIMARY SCHOOL

## DUTY OF CARE

### Statement:

***Penshurst Primary School believes that the safety of children is of paramount importance and as such, has a zero tolerance of child abuse. Duty of care extends to protecting all children from child abuse.***

(Ministerial Order 870 – effective August 1, 2016)

### 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. 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.

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 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.

### Purpose:

- 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.

### 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:

- a duty of care was owed to the person harmed at the time of the injury

- the risk of injury was foreseeable
- the likelihood of the injury occurring was more than insignificant
- there was a breach of the duty of care or a failure to observe a reasonable standard of care
- 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.

### **Implementation:**

- 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.
- 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.
- 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 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
- 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.

### **Risk to students outside 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.

### **Yard Duty**

- 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
- 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.
- Yard duty teachers should wear a high visibility vest whilst on duty

### **Classroom supervision**

- Staff must not leave students unattended during lessons
- Where students are required to leave the classroom e.g. to return computers, the teacher should ensure that as far as possible, the students remain in visual contact.
- Teachers are responsible at all times for students and the duty of care cannot be delegated to support staff, incursion staff or trainee teachers etc.
- In an emergency situation send one or more students to get help from the nearest teacher or from the office.
- If students are sent out of the room as a consequence for misbehaviour, visual contact should be maintained

### **Excursions, Incursions and Camps**

- In these situations students are generally more active and less constrained than in a classroom situation
- During an incursion the duty of care remains with the Dimboola Memorial Secondary College teachers
- Camps and excursions require the teacher to fully comply with the DET guidelines for supervision. Dimboola Memorial Secondary College teachers have the duty of care at all times and should ensure they have medical forms and permission forms with them.
- All camps and excursions should carry a mobile phone and first aid kit
- If the return to school time differs from that published then parents will be contacted and a senior member of staff will remain at school until they arrive

Staff will be reminded of their duty of care annually and the Duty of Care policy will be published in the staff handbook.

**Definition:**

**Child abuse** includes—

- any act committed against a child involving—
  - a sexual offence or
  - an offence under section 49B(2) of the *Crimes Act 1958* (grooming)
- the infliction, on a child, of—
  - physical violence or
  - serious emotional or psychological harm
- serious neglect of a child.

**This policy was last ratified by School Council in....**

**May 2018**

References: <http://www.education.vic.gov.au/school/principals/spag/safety/Pages/dutyofcare.aspx>

<http://www.vrqa.vic.gov.au/childsafe/Pages/resources.html>