Duty of Care Policy

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**References**: Victorian Government Colleges Policy Advisory Guide

A requirement of VRQA registration is that all staff are reminded each year at the first staff meeting of their duty of care and their legal responsibilities. It is an expectation that the College Principal as part of their contract are required to plan, implement and monitor arrangements to ensure the safety, security and wellbeing of students.

**BASIC BELIEFS**

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 reasonable have foreseen.” (Richards v State of Victoria 1969, VR 136 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 reasonable have foreseen) and against which preventive measures could be taken.

**College 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.**

Colleges 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 college, and teachers are responsible for carrying out their assigned supervisory duties in such a way that students are, as far as can be reasonable 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.
GUIDELINES FOR ACTION / 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 college or on college 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 college, or to college activities, or to activities occurring outside the college where a student is acting on a teacher’s instructions. The duty also applies to situations both before and after college 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 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 college during time release without approval
- inadequate supervision on a college 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.

Risks to students outside the college 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 college environment. However, the important issue in all cases will be whether the college took reasonable steps to protect the student from the risk.

Risks outside the college environment may sometimes call for immediate and positive steps by a college depending on the age of students, urgency and threat of injury. Consider for example, if a live power line came down outside the college, no emergency workers had arrived, and primary children are about to be dismissed to walk home. No college would allow the children to walk out to that danger unsupervised.

There will be a number of other situations where the college will be under a duty to take reasonable steps. In some instances, the college’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 college bus may require the college to suspend or refuse to transport the bully. In other instances, the college 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 colleges may involve informing the police, contacting the other college to implement preventative measures, and notices to parents and students.

At our college students are in a variety of sectors and while there are differences between primary, secondary and special the fundamental supervision issues apply equally to all. Staff are responsible for their students at all times. The following instructions and notices apply to all staff.

Classroom Supervision

- 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 a phone for the Principal or Assistant Principals/Leading Teachers 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 Principals or Principal. This should be accompanied by documentation and appropriate follow up as per the College Wide Positive Behaviour model or a student’s individual management plan. 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 college.
- Use of students as monitors outside the room during class time must only occur with the approval of the Principal or Assistant Principals.
- Discretion is to be used when allowing students to visit the toilet or the Library/Resource Centre 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 college requires the teacher to fully comply with DEECD 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 College 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 responsible for College Organisation.
- 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

- 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 college require the teacher to fully comply with DEECD 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 DEECD guidelines.

• Be aware that college 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 college.

• Arrangements will be made for students not attending to continue their normal program at college 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 college to inform the Principal of the new arrival time so that parents can be contacted and a senior staff member will remain at college until they arrive. Similarly if a student or other member of the excursion is injured the Principal needs to be contacted as soon as practical.

• 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 DEECD guidelines when organising an excursion, incursion or camp. All procedural steps contained in the College 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 college year, and will be placed on the intranet.

• New staff will be informed of their Duty of Care as part of the college’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 Colleges 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.


**EXPECTATIONS**

• This policy will be reviewed as part of the college’s review cycle.

1. This policy will be made available on the College’s website.

2. This policy was ratified by College Council on 12/02/2014