



Duty of Care Policy

GLEN HUNTLY PRIMARY SCHOOL

PURPOSE

The purpose of this policy is to explain to our school community the non-delegable duty of care obligations that all staff at Glen Huntly Primary School are obligated to provide to our students and members of the school community who visit and use the school premises.

POLICY

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

“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.

Whenever a student-teacher relationship exists, the teacher has a special duty of care. “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.”

As part of this duty, teachers are required to supervise students adequately and safely. This requires protection from known hazards, but also protection from those that *could* arise.

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

- Yard duty and Supervision
- Bullying Prevention
- Camps and Excursions
- First Aid
- Grounds Maintenance
- Student Private Property (Mobile Phones)
- Child Safe Standards
- External Providers (OSHC)
- Emergency Management
- Volunteers and Visitors
- Working with Children and Suitability Checks
- Mandatory Reporting
- Occupational Health and Safety

School staff 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 OH&S compliant and will take reasonable steps to reduce the risk of members of our community suffering injury or damage because of the condition 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.

SUMMARY:

- 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 Department of Education staff can seek legal advice about their particular circumstances from the Department's Legal Division on 03 9637 3146 or legal.services@education.vic.gov.au

Details

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, including 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

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.

For example, a principal is not required to personally supervise every student at lunchtime to discharge their duty but instead is responsible for establishing and monitoring a system for supervision that is shared amongst staff. Another staff member may be responsible for preparing the yard duty roster and each staff member rostered onto yard duty will have a duty of care to take reasonable steps in relation to any foreseeable risks to students arising at lunchtime which may include:

- monitoring specific students where there are known risks
- generally monitoring all students and intervening where there is inappropriate student behaviour
- responding to accidents and taking appropriate measures to follow up any incidents that have occurred, which may involve ensuring that the incident is reported to another staff member with responsibility for further action

Duty of care to students outside the school

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.

For example, in some circumstances the Department may be liable for injuries to students in the playground before school begins for the day if they occur during the period of time for which the school yard is supervised.

In one case, a non-government school was found liable for injury to a primary student at an unsupervised bus stop, approximately 350 metres from the school and located outside a secondary school. School staff knew that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm to students at this bus stop while they were gathered there. In addition, a teacher from the primary school witnessed the incident but did not intervene. The court found that the teacher-student relationship was still in existence at the time of the injury, and therefore the non-government school authority had a duty of care.

Policies and duty of care

Department policies and guidance relating to the health, safety and wellbeing of students support school staff to meet their duty of care. Schools also have their own local policies that support staff to meet their duty of care, such as health policies, bullying prevention policies, yard duty and supervision policies, student wellbeing policies, and child safety policies. Principals must have in place good systems to ensure the full and proper implementation of policies by all staff, as a reasonable step to prevent foreseeable harm.

If parents/carers or students make a claim of negligence against the Department, the Department's policies and the school's local policies, and evidence of the school's implementation of these policies, are often relied upon in the legal claim.

Legal background

'Duty of care' is an element of the tort of negligence. In broad terms, the legal position is that if a person is injured as a result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

To successfully bring a compensation claim in negligence, a person must establish on the balance of probabilities, that:

- a duty of care was owed to them at the time of the injury
- the risk of injury was reasonably 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; and
- this breach or failure caused or contributed to the injury, loss or damage suffered

The fact that a duty of care exists does not mean that a school staff member will be liable for every injury sustained by a student. In order for the student to succeed in a negligence claim, all of the above elements must be established.

In Victoria since 1 July 2017, and only specifically in relation to child abuse claims, there is a 'presumption of liability' for any organisation that exercises care, supervision or authority over children, including schools. This means that school staff need to prove that they took 'reasonable precautions' to prevent child abuse by an individual associated with the school, if the Department is to successfully defend a legal claim. This does not change existing duties that school staff already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

Related policies

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](#)

- Ventilation and Air Purification Policy:
<https://docs.google.com/document/d/1XgVtDH1EXpB8oR2TJpF6AfflQum5rgX6tNq9BYITdeY/edit>

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 \(Vic\)](#)

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. Our School will follow all applicable Department of Education policy and guidelines in relation to off-site learning and will ensure that the safety and welfare of the students engaging in these activities is paramount.

REVIEW CYCLE

This policy was last updated on October 2023 and is scheduled for review in October, 2026.