



# Kings Park Primary School

## Duty of Care

### Background

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. Creating safe places for children and young people to fully and actively participate in the life of the school community benefits everyone. Kings Park Primary School ensures that the children in its care are protected to the best of its ability and in line with their duty of care and the compulsory Child Safe Standards. These Child Safe Standards are compulsory for all organisations providing services to children and young people and aim to drive cultural change in organisations so that protecting all children and young people from abuse is embedded in the everyday thinking and practice of leaders and staff. This will assist organisations to:

- prevent child abuse
- encourage reporting of any abuse that does occur
- improve responses to any allegations of child abuse

The Child Safe Standards also strongly promote the safety of Aboriginal children and young people; children and young people from culturally and/or linguistically diverse backgrounds, LGBTI children and young people, and the safety of children with a disability.

### Purpose

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

### Definition

Whenever a student–teacher relationship exists, the teacher has a 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.

## **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 teachers have an understanding of their duty of care to students, and behave in a manner that does not compromise these legal obligations

## **Implementation**

Kings Park Primary School has developed policies and procedures to manage common risks in the school environment, including:

- Bullying Prevention
- Camps, Excursions and Incursions
- First Aid
- Grounds and Tree Maintenance
- Child Safe Standards
- External Providers
- Emergency Management
- Visitors
- Working with Children and Suitability Checks
- Mandatory Reporting
- Occupational Health and Safety

Staff at Kings Park Primary 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. 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 student 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 or young person 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 teaching session or leaving a teaching session early
- inadequate supervision of students attending class during morning tea/lunch breaks
- failing to act appropriately to protect a student who claims to be bullied
- believing that a child or young person is being abused but failing to report the matter appropriately
- being late to supervise students assembling in the hall or line up areas
- leaving students unattended in the school building (e.g., classrooms, hall)
- using a personal mobile whilst undertaking supervision
- ignoring dangerous student behaviours
- leaving the school during time release without signing out
- inadequate supervision on a school excursion or incursion

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 student welfare 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 school 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 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.

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 student travelling independently to an excursion/sporting activity from their home address should be able to contact the teacher using the school mobile. In other instances, the school may not control the activity, and the reasonable measures available to it will be limited.

Teachers are responsible for their students at all times: The following instructions and notices apply to all teachers.

## **Teaching Supervision**

- Teachers must not leave the teaching location unattended at any time during the event/activity.
- It is not appropriate to leave students in the care of ancillary staff, voluntary 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 contact the Principal or Assistant Principal
- No student should be left unsupervised by Kings Park PS teachers at any time.

## **Movement of Students**

- Care and discretion are required at all times if allowing students to leave the incursion/excursion area, e.g., when allowing students to visit the toilet
- Teachers are responsible for actively supervising students while using any form of transport that is required for travelling to and from school excursions or camp destinations.

## **Playground Supervision**

- Playground supervision is an essential element in a 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 sometimes less constrained and more prone to accident and injury in the school playground and external play areas than in a more closely supervised environment.
- Be aware that playground supervision within the school requires the teacher to fully participate and 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 school policy whilst supervising students in the playground and all play areas.
- Supervising teachers on duty are to remain in the playground until the end of the break period or until replaced by a colleague, whichever is applicable.
- The handing over of duty from one teacher to another must be quite definite and must occur in the area of the playground. Where a relieving teacher does not arrive for courtyard supervision, the teacher currently on duty should send a message, but not leave the area until replaced.
- Be alert and vigilant - intervene immediately if potentially dangerous behaviour or possible threat is observed in the playground.
- You should always be on the move and highly visible. High visibility vests are provided by the school and must be worn by supervising staff on playground duty.

## **Excursions & Incursions (refer to relevant policy for each)**

- Be aware that students are sometimes less constrained and more prone to accident and injury than in a more closely supervised environment.
- 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 excursions outside the school require the teacher to fully comply with Department of Education and Training (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 an 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 information will also be kept at the Kings Park PS General Office.
- The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and a first aid kit appropriate to the activity/venue.
- 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/carers 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. Teachers are to walk to the middle of the crossing to ensure visibility and orderly crossing. Other teachers control the flow of students across the road.
- All staff must follow the DET guidelines when organising an excursion or incursion. All procedural steps contained in the *School Excursions, Incursions and Camps Policy & Procedures* outlines must also be followed at all times.

## Informing Staff of the Legislative Liability of Duty of Care

All staff will be informed of their legal requirement as follows:

- A copy of this document will be provided to each member of staff at the first staff meeting at the commencement of the school year, and will be placed on the Intranet
- New teachers will be informed of their Duty of Care as part of the school's Induction Checklist
- Duty of Care will be a regular agenda item at staff and team meetings and staff will be directed to familiarise themselves with the section relating to Student Safety of the Victorian Government Schools Policy Advisory Guide
- Staff will complete a risk assessment including duty of care when completing and submitting plans for camps, excursions and incursions
- Staff will be regularly directed to the Student Wellbeing Policy.

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.

## Evaluation

This policy to be reviewed every 3 years and following significant incidents if they occur.

## Policy – Identification, Information and Recording

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| First Reviewed: |  |
| Approved by:    | School Council President<br>Signed: .....                      |
| Review Date:    |  |
| Updated         | November 2020  |
| References      | School Policy and Advisory Guide: <a href="#">Duty of Care</a> |

**Reference:** <https://www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare>

