DUTY OF CARE FOR STUDENTS  
Policy & Procedures

Acknowledgement: The following policy and procedures are derived from and follow closely those of the Department of Education Services of Western Australia and have been formulated also with reference to the policies and guidelines of the Association of Independent Schools of Western Australia.

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1. POLICY

a) Teaching staff owe a duty to take reasonable care for the safety and welfare of students whilst students are involved in school activities or are present for the purposes of a school activity. The duty is to take such measures as are reasonable in all those circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

b) In discharging their duty of care responsibilities, teaching staff must exercise their professional judgement to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students’ independence and maximising their learning opportunities.

c) When non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

2. BACKGROUND

2.1 INTRODUCTION

Duty of care is a legal concept that has its origins in the common law. The common law is a collection of legal principles that have been established over time by the courts. The duty of care principle not only underpins, but to a large extent drives, most school policies and practices. This policy attempts to explain, in plain English, what “duty of care” means, how teaching staff may discharge their duty of care to students, and the circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

3. DEFINITIONS

3.1 CARING

Caring for students may assume different meanings depending on the context. However, examples include (but are by no means limited to) not putting students at risk by doing something or failing to do something that could cause the student to suffer injury or harm, taking precautions, intervening to prevent obvious hazards from causing injury or harm, following safety procedures and providing adequate instructions to students.

3.2 DUTY OF CARE

A duty imposed by the law to take care to minimise the risk of harm to another.

3.3 EXTERNAL PROVIDER

A business/individual paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity; or

*Examples*

Private dance or abseiling instructor, Perth Zoo, AQUA, Leeuwin Ocean Adventures, SciTech, Challenge Stadium Aquatic Centre.
3.4 NON-TEACHING STAFF
Employees of St Mary’s Anglican Girls’ School who are located at the school premises and who are not members of the teaching staff.

*Examples*
Administrative staff, grounds staff, education assistants, registrars, library assistants, laboratory assistants, home economics assistants, social trainers, exam supervisors:
- school nurses;
- school chaplains.

3.5 REGISTERED TRAINING ORGANISATION (RTO)
An organisation registered by a state or territory recognition authority to deliver training and/or conduct assessments and issue nationally recognised qualifications in accordance with the Australian Quality Training Framework

*Examples*
TAFE colleges and institutes, adult and community education providers, community organisations, schools, higher education institutions, commercial and enterprise training providers, industry bodies and other organisations meeting the registration requirements.

3.6 SCHOOL ACTIVITY
An activity that is organised or managed by a member of the teaching staff or non-teaching staff as part of his or her duties.

*Guidelines*
Where an activity is not a school activity, it is good practice to advise parents/guardians of that fact, and that the school assumes no responsibility for the supervision of students and for any aspect of the activity.

School activities may take place either on or away from school premises, and either during or outside of school hours.

In some circumstances, a duty may be owed to students who arrive early for the purposes of a school activity and whose presence is known or ought to be known by school staff (for example, see Appendix A, Duty of Care: School-Based Applications – Students on school grounds before school).

In some circumstances, a duty may be owed to students who remain at a place after participating in a school activity and whose presence is known or ought to be known by school staff (for example, see Appendix A, Duty of Care: School-Based Applications – Students on school grounds after the close of school).

3.7 STUDENT
A person who is enrolled at St Mary’s Anglican Girls’ School.

3.8 TEACHING STAFF
Has the same meaning as in section 237 of the *School Education Act 1999 (WA)* and regulations 127 and 127A of the *School Education Regulations 2000 (WA).*
3.9 VOLUNTEER
An adult or organisation who/which offers services for school activities, but receives no remuneration from the school for the services provided.

Example
Parents/guardians and other relatives, community members, employers who accept students on work placements, student teachers

4. RELEVANT LEGISLATION OR AUTHORITY
School Education Act 1999 (WA), sections 63(1)(c) and 64(1)(e)
School Education Regulations 2000 (WA), regulations 38 and 39
Occupational Safety & Health Act 1984 (WA)
Volunteers (Protection from Liability) Act 2002 (WA)
Western Australian College of Teaching Act 2004
Working with Children (Criminal Record Checking) Act 2004
Working with Children (Criminal Record Checking) Regulations 2005
Civil Liability Act 2002
Occupiers Liability Act 1985

5. PROCEDURES

5.1 REASONABLE CARE

Guidelines
The duty owed to students is not a duty to ensure that no harm will ever occur, but rather a duty to take reasonable care to avoid harm being suffered.

A person suffering harm will be entitled to damages (compensation) if he or she can establish that a member of the teaching staff, non-teaching staff, volunteer or external provider was negligent – that is, failed to take reasonable care – and the negligence was the cause of the person’s harm (see Appendix B).

What constitutes reasonable care will vary according to the circumstances, but the following factors, although not necessarily exhaustive, must be taken into consideration in assessing the ‘reasonableness’ of the level of care required for a particular student:

- the student’s age, experience and capabilities;
  The level of care will be high where young students are concerned but may be less in the case of more mature students in Years 11 and 12.
- physical and intellectual impairment;
  A student with a disability is generally exposed to a higher level of risk of injury than a student without a disability. This may be because the student with a disability suffers from an impairment of motor skills or physical coordination, a lack of inhibition or control, or it may be because the student has a limited appreciation of the possibility of danger. Where the physical or intellectual disability is such as to enlarge the risk inherent in undertaking a school activity, then appropriate precautions must be taken.
• medical condition;  
  **Guideline**  
  Where students are afflicted by particular medical conditions, for example, haemophilia, asthma, a heart condition, brittle bones or epilepsy, special care must be taken to protect such students if their condition is known or ought to be known and exposes them to a special risk of injury.
• behavioural characteristics;  
  **Guideline**  
  The level of care is increased in the case of students who are known to behave in a manner that increases the risk of injury.
• the nature of the school activity;  
  **Guideline**  
  Increased care is required in relation to school activities with an inherently high level of risk of injury.
• the nature of the environment in which a school activity is to be undertaken;  
  **Guideline**  
  Increased care is required when students are placed in hazardous environments in which the potential risks of injury-related incidents are high.
• any conflicting responsibilities that the school or staff member may have; and  
• normal practices within the school and departmental policies and procedures.

5.2 ASSESSING THE RISK INVOLVED IN A SCHOOL ACTIVITY  
When assessing the risk involved in a school activity, consideration must be given to the following factors:
• the probability of the risk occurring;  
  **Guideline**  
  What is the likelihood of harm being suffered in the circumstances? Is it reasonably probable or so improbable as to be scarcely worth taking into account?
• the magnitude of the risk;  
  **Guideline**  
  How serious may the consequences be if the risk is run and harm results? Are the potential consequences too great to justify running the risk?
• the expense, difficulty and inconvenience involved in alleviating the risk.  
  **Guideline**  
  What is to be gained by running the risk in order to undertake the school activity? What is to be lost if it is not undertaken? What alternatives are reasonably available, and with what risks or other disadvantages are they attended? How easy is it to take precautions against the risk? The easier it is to take precautions, the greater the obligation to take those precautions.

5.3 TEACHING STAFF  
• Teaching staff must care or provide for the care of students whilst students are involved in school activities or present for the purpose of school activities.
**Guidelines**

**When is a duty owed?**
The duty of care owed by a member of the teaching staff to a student automatically arises out of the teacher-student relationship. Such a relationship will exist whenever and wherever a student is involved in a school activity or a student is present for the purposes of a school activity.

The teacher-student relationship is not necessarily confined to students enrolled at the school at which the member of the teaching staff is employed.

**Example**
A teacher who supervises a group of students from a number of different schools during an inter-school sports carnival will owe a duty to all of the students under his or her control to take such measures as are reasonable in all the circumstances to protect them from risks of harm that reasonably ought to be foreseen.

**What does the duty encompass?**
The duty encompasses a wide range of matters, including (but not limited to):

- (a) provision of adequate supervision
- (b) ensuring grounds, premises and equipment are safe for use by students;
- (c) implementing strategies to prevent bullying from occurring in school; and
- (d) rendering medical assistance (if competent to do so) to, or seeking assistance from a medically trained person for a student who is injured or becomes sick at school.

**How may the duty be discharged?**
In some circumstances a member of the teaching staff may only be able to discharge his or her duty of care by personally and directly caring for students whilst they are involved in school activities or are present for the purpose of school activities.

**Example**
Where a group of students are very immature and are known to ‘play up’ when supervised by anyone other than a member of the teaching staff.

In other circumstances, however, it may be sufficient for a member of the teaching staff to entrust the care of students to a member of the non-teaching staff, a volunteer, an external provider or a member of the teaching staff from another school.

- When deciding whether a member of the non-teaching staff, an external provider or a volunteer might personally care for students (without a member of the teaching staff also being present), teaching staff must satisfy themselves that the person is suitable for the task being assigned.
Teaching staff may breach their duty of care if reasonable care is not exercised in choosing an appropriate person to care for students.

RTO lecturers, trainers and assessors also owe a duty of care to students attending their programs. Duty of Care-VET for School Students (VSS) Attending TAFEWA Colleges (located at: http://policies.det.wa.edu.au) provides advice on how schools and TAFEWA colleges discharge their duty of care responsibilities.

- When making this assessment, teaching staff must consider factors such as the:
  - number of students involved;
  - age, experience, capabilities and behaviour of the students;
  - nature of the environment, premises and of the activity to be undertaken; and
  - age, ability, experience and general suitability of the proposed carer.

- Volunteers who perform “child related work” as defined in the Working with Children (Criminal Record Checking) Act 2004 (located at: www.slp.wa.gov.au or www.checkwwc.wa.gov.au) and who are not eligible for an exemption, must provide a current Working with Children Check.

- External providers must provide both a current national police certificate and a current Working with Children Check.

Guidelines
People exempt from having a Working with Children Check include:
- volunteers under 18 years;
- parents volunteering for school activities where they have a child enrolled in the school. (This exemption does not apply to volunteer parents attending overnight camps unless the parent is engaged in child related work for no more than 5 days in a calendar year);
- short term visitors to Western Australia carrying out child related work for 2 weeks after their arrival, and for no more than 2 weeks over a 12 month period; and
- workplace supervisors of students on work experience unless they otherwise carry out child related work.

More detailed information on the Working with Children Check is available by visiting the website located at www.checkwwc.wa.gov.au.

Volunteers who are exempt from having a Working with Children Check and university staff members who are delivering an educational program to students, should be requested to complete a Confidential Declaration indicating whether or not they have any convictions or whether there are any circumstances or reasons that might preclude them from working with or near children.
Non-teaching staff, external providers and volunteers are not generally responsible for personally caring for students. Consequently, before entrusting these persons with the care of students, teaching staff must first obtain the agreement of the person to care for students (without a member of the teaching staff also being present). Teaching staff must allow non-teaching staff, external providers and volunteers an opportunity to refuse a request to personally care for students, and respect that person’s decision to refuse.

**Guidelines**

*By reason of their Job Description, however, some members of the non-teaching staff may be required to personally care for students as part of their normal duties.*

- When non-teaching staff, external providers and volunteers agree to personally care for students (without a member of the teaching staff also being present), teaching staff must provide them with clear instructions as to the level of care required.

**Examples**

A Year 12 coordinator is satisfied, having taken into consideration factors such as those mentioned above, that the Aboriginal Education Officer (AIEO) is a suitably qualified and experienced person to accompany three Year 12 Aboriginal students to an open day for prospective Aboriginal students at the University of Western Australia. The Year 12 coordinator has complied with the requirements of the Excursions policy, has briefed the AIEO about the level of care required for the three students and has agreed to be contactable via mobile telephone should the AIEO experience any problems whilst caring for the students. The AIEO feels comfortable to accept the responsibility for caring for the three students in these circumstances.

A Year 4 teacher is satisfied, having taken into consideration factors such as those mentioned above, that a parent volunteer is a suitably qualified and experienced person to supervise her class whilst she leaves the classroom for a few minutes. The teacher has briefed the parent volunteer about the method of supervision and has instructed her to request assistance from the teacher in the adjoining classroom in the event of an emergency. The parent volunteer feels comfortable to accept the responsibility for supervising the class for a short period in these circumstances.

A LOTE teacher is satisfied, having taken into consideration factors such as those mentioned above, that a teacher from another school is a suitably qualified and experienced person to accompany a group of language students from various schools on a cultural excursion to France. The LOTE teacher has briefed the accompanying teacher about the level of care required for his students. The LOTE teacher has also made enquiries to satisfy himself that the French families, with whom his students will be billeted, are fit and proper persons.

5.4 **NON-TEACHING STAFF, VOLUNTEERS, EXTERNAL PROVIDERS**

- Non-teaching staff, volunteers and external providers (and indeed, all members of the community) must take reasonable care to avoid doing or not doing things that could reasonably be contemplated as causing injury to others (including students).
Examples
A school officer should not leave a rubbish bin in the middle of the hallway because it is reasonably foreseeable that someone could trip over it and suffer an injury.

A laboratory assistant should not leave dangerous chemicals lying around the science laboratory.

- Non-teaching staff, volunteers and external providers do not have the same special duty of care relationship with students as do teaching staff, and unless requested and agree to do so, are not responsible for personally caring for students.

Guidelines
By reason of their Job Description, however, some members of the non-teaching staff may be required to personally care for students as part of their normal duties.

- Non-teaching staff, volunteers and external providers have a right to refuse a request to personally care for students and to have their decision respected by members of the teaching staff.

Guidelines
A member of the non-teaching staff may have limited scope to refuse a request from a member of the teaching staff to personally care for students if, by reason of their Job Description, the request relates to a task he or she is required to perform as part of his or her normal duties.

If non-teaching staff, volunteers and external providers agree to perform tasks that require them to personally care for students (e.g. supervise students without a member of the teaching staff also being present), they will owe the same duty of care to those students as the duty owed by teaching staff. In other words, they will be required to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.