

Duty of Care Policy

Background

Duty of care is a legal concept that defines the duty a person has to use **reasonable care** towards others in order to protect them from known or reasonably foreseeable risk of harm and/or injury.

Port School and its teachers owe a duty of care to take reasonable care for the safety and welfare of all students in the School. The duty of care exists when the teacher/student relationship is established. The duty requires the School and its teachers to take all reasonable steps to ensure the safety and welfare of the students from both known and reasonably foreseeable risks of harm and/or injury. In particular instances, non-teaching staff, volunteers and external providers will owe a duty of care to students.

When organising activities for students, in order to fulfil their duty of care obligations, the teacher needs to exercise their professional judgment in relation to maximising student learning opportunities whilst considering safety and risks. Often a teacher's professional judgment will be guided by School policies and the School's risk assessment procedure.

Port School's unique cohort of students requires teacher vigilance at all times. Individual circumstances will however determine what constitutes reasonable care. Factors may include:

- The student's age, experience and capabilities.
- Any physical and intellectual impairment.
- Existing medical conditions.
- Behavioural characteristics.
- Nature of the activity and the environment in which it is being held.
- Existing school procedures and policies.
- The level of risk which has been assessed.
- The supervisor's level of experience.
- The supervisor's relationship with the student.

These factors should be taken into account when planning student activities.

Scope

Port School and its teachers owe a duty to take care of students whilst they are involved in school-related activities. When non-teaching staff, volunteers and external providers agree to take personal care of students in the absence of a teacher, they will also owe a duty of care to the students.

Principles

Duty of care owed by the School

- To provide a child-safe environment, safeguarding all students and promoting practices that provide for safety and wellbeing of students.
- To ensure grounds and equipment are safe for students to use.
- To ensure policies and procedures covering student safety, security and on-site medical care are in place.
- To provide all staff access to relevant school policies and procedures.
- To ensure all staff understand and comply with all policies and procedures.
- To recruit appropriately qualified staff to all areas of the School.
- To recruit staff who have a valid Working with Children Check and National Police Clearance or proof of application.
- To recruit teaching staff who hold a TRBWA registration.
- To annually verify TRBWA registrations and Working with Children Checks.
- To provide new staff with an induction program including but not limited to Port School Code of Conduct, duty of care, emergency procedures, child protection reporting requirements.

- To ensure all newly recruited staff have read, understood and signed the Port School Code of Conduct.
- To secure all student records against inappropriate access.
- To provide parents/guardians/carers the opportunity to update essential contact information.
- To collect information regarding student health and wellbeing.
- To provide First Aid treatment in the event of an accident.
- To provide an anaphylaxis management procedure.
- To administer prescribed medication requested by and limited to Parental Consent Forms.

Duty of care owed to students by teaching staff

The teacher's duty of care responsibility is automatic, arising from the establishment of the teacher/student relationship and remains at all times whilst the student is in the teacher's care. This duty is non-delegable and applies to all on and off campus situations.

- To be aware of and implement all school policies affecting students' safety and wellbeing.
- To complete relevant risk assessments when planning activities for students.
- To ensure grounds and equipment are safe for students to use.
- To provide adequate supervision.
- To choose appropriate persons for care of students.
- To provide appropriate medical assistance if required.

When duty of care owed to students is delegated to non-teaching staff, volunteers and external providers

When non-teaching staff, volunteers and external providers agree to take personal care of students in the absence of a teacher, they will owe a duty of care to the students and must take reasonable measures to prevent harm coming to the students. Before the School or teacher delegate the duty of care responsibility, the School and/or teacher must ensure that the non-teaching staff, volunteers (eg: parents) or contractors satisfy the following:

- They are suitable for the task being delegated.
- They are covered either by the School's insurance or have their own adequate insurance cover in place.
- They agree to assume this personal duty of care for the students (they have a right to refuse if it is not part of their normal duties).
- They are provided with clear instructions as to the level of care required.

Definitions

External providers

A business/individual paid by the School to provide a venue, service and/or expertise appropriate to a particular school activity. eg: school music teacher, Perth Zoo, IT support etc.

Reasonable care

The concept of 'duty of care' is based on reasonable care. It is not a duty to ensure no harm will come to a student, but that reasonable care to avoid harm being suffered is taken. What is considered reasonable care varies depending on the circumstances at the time.

Non-teaching staff

Employees of the School who work on the School premises and are not part of the teaching staff. eg: student support staff, administrative staff, maintenance staff etc.

Volunteers

An adult or organisation who/which offers services to the School for school activities but receives no remuneration from the School for services provided. Eg: parents/guardians/carers and other relatives, community members, employers who accept students on work experience, student teachers.



Legislation

Port School policies and procedures take account of the following relevant Legislation and Authorities in relation to its duty of care obligations:

- Occupational Safety and Health Act 1984 (WA)
- School Education Act 1999 (WA)
- School Education Regulations 2000 (WA)
- Volunteers (Protection from Liability) Act 2002 (WA)
- Working with Children's (Criminal Record Checking) Act 2004 (WA)
- Civil Liability Act 2002
- Occupiers Liability Act 1985

Associated policies and procedures

- Duty of Care Guidelines
- Port School Code of Conduct
- Child Protection Policy
- Pastoral Care Policy
- Behaviour Management Policy
- Concerns, Complaints and Disputes Policy
- Critical and Emergency Incident Management Policy
- Evacuation and Lockdown Procedures
- OHS Policy
- Excursion Policy
- Medication Policy
- Privacy Policy
- Record Keeping, Retention and Disposal Policy
- Governance Policy