

# DUTY OF CARE POLICY



*Charles La Trobe P-12 College takes a zero-tolerance approach to child abuse and is fully committed to ensuring that its strategies, policies, procedures and practices meet all **Child Safety Standards as specified in Ministerial Order No. 870 (2015).***

## LEGAL BACKGROUND

- Duty of care” is an element of the tort of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of the negligence of another, they should be compensated for the loss and damage which arises from the negligent act or omission.
- In order to successfully bring a claim in negligence for compensation for an injury, a person must establish, on the balance of probabilities, that:
  - a duty of care was owed to the person harmed at the time of the injury
  - the risk of injury was 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
  - this breach or failure was a cause of the injury.
- The fact that a duty of care exists does not of itself mean that a school will be liable for an injury sustained by a child. In order for the child to succeed in a negligence claim, all of these elements must be established.
- From 1 July 2017, an additional duty of care will exist for any organisation in Victoria that exercises care, supervision or authority over children, including schools. This duty of care will establish a presumption of liability, such that these organisations will need to prove that they took “reasonable precautions” to prevent child abuse, if they are to successfully defend a legal claim. The new duty does not change existing duties that schools and teachers already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

## RATIONALE

- Principals and teachers are held to a high standard of care in relation to children. The duty requires Principals and teachers to take all reasonable steps to reduce risk, including:
  - ensuring the school complies with the seven Child Safe Standards
  - provision of suitable and safe premises
  - provision of an adequate system of supervision
  - implementation of strategies to prevent bullying

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- ensuring that medical assistance is provided to a sick or injured student
- managing employee recruitment, conduct and performance
- The duty is *non-delegable*, meaning that it cannot be assigned to another party.
- Whenever a teacher-child relationship exists, teachers have a special duty of care. This has been expressed as: “a teacher is to take such measures as are reasonable in the circumstances to protect a child under the teacher’s charge from risks of injury that the teacher should reasonably have foreseen.” (*Richards v State of Victoria*).
- The nature and extent of the duty will vary according to the circumstances. For example, the standard of care required will be higher when taking a group of preps for swimming lessons than when teaching a group of year 12s in the classroom.
- The important issue in all cases will be what precautions the school could reasonably be expected to have taken to prevent the injury from occurring. This will involve consideration of the following factors:
  - the probability that the harm would occur if care were not taken
  - the likely seriousness of the harm
  - the burden of taking precautions to avoid the risk of harm
  - the social utility of the activity that creates the risk of harm.
- A number of cases have established that, in some circumstances, a school’s duty (and therefore the Department’s duty) will extend beyond school hours and outside of school grounds. Whether the duty extends outside of school grounds depends on all the circumstances of each individual case, and the school’s knowledge of any dangers. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to children is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.
- Based on case law, whether the duty extends outside of school grounds depends on all the circumstances of each individual case, and the school’s knowledge of any dangers.
- It is important that schools clearly inform parents when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours.
- There will be other situations in which schools will be under a duty to take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to children is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.
- Schools enrolling international children under the age of 18 (who are not being cared for by a parent or suitable relative) are expected to have a comprehensive home stay policy and procedures in place to assess and monitor the suitability of accommodation

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arrangements. See School Resource Kit and Quality Standards under [Department resources](#) at the website below.

## PURPOSE

- To ensure the staff at Charles La Trobe College has an understanding of the nature of the legal duties owed by teachers and school staff towards children.
- To ensure the school complies with legislation and DET policy and guidelines.
- To ensure the school has in place strategies to enhance compliance with the Child Safe Standards 1, 2, 4 and 6.

## IMPLEMENTATION

- The safety and wellbeing of children is our highest priority.
- The Principal will ensure that staff members have an understanding of their duty of care as it applies to classroom supervision, movement of children, yard supervision, camps and excursions, first aid and child health care needs and medication.
- 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 children:
  - arriving late to scheduled timetabled yard duty responsibilities
  - failing to act appropriately to protect a child 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 children after the bell has sounded if applicable
  - leaving children unattended in the classroom
  - ignoring dangerous play
  - inadequate supervision on a school excursion
- Given that the duty of care may extend beyond school hours, the school will be alert to situations in which immediate and positive steps may be required. If for example, a live power line came down outside the school, no emergency workers had arrived, and children were about to be dismissed to walk home, the school would not allow the children to walk out to that danger unsupervised.

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- In providing advice to children, teachers should limit their advice to areas within their professional knowledge, given in situations arising from a role specified by the Principal and ensure such advice is correct and in line with the most recent available statements.
- Teachers must avoid giving advice in areas unrelated to their role or where they may lack expertise.
- Informing staff of the legislative liability of Duty of Care via:
  - 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 staff members will be informed of their Duty of Care as part of the school's Induction Program.
- Staff will complete a risk assessment including duty of care when completing planning for camps and excursions.
- A risk assessment also will be completed in regard to the school's child safe environment.
- The school will regularly inform parents when playground supervision will be provided and that no supervision of the playground occurs outside these hours.
- Please refer also to the school's *Child Safe Policy*, the *Mandatory Reporting (Child Protection) Policy*, *Camps and Excursions Policy*, *Yard Duty/Supervision Policy*, *Diabetes Management Policy*, *Health Care Needs Policy*, *Anaphylaxis Management Policy*, *Asthma Management Policy*, *Epilepsy & Seizure Policy*, *First Aid Policy*, *Sun & UV Protection Policy*, *Bullying & Harassment Policy*, *Volunteer Workers Policy*, *Visitors to the School Policy* and the *Emergency Management Plan* and the *Critical Incident Management Plan* all of which relate to the school's duty of care.

### EVALUATION

This policy will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update April 2019).

### RATIFICATION

This policy was last ratified by College Council on 14 February, 2017.

This update was ratified on 15th February, 2018.

School council ratification is not required for this policy.

### REFERENCE

<http://www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare.aspx>

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## CLTC SPECIFIC PROCEDURES

- An important aspect of the individual teacher’s duty of care is to inform casual staff of all known risks and allocate responsibilities for student supervision according to the experience of available staff in the classroom, the yard and on outings.
- Student supervision requires constant vigilance by all staff and careful planning by teachers.
- Students are to be fully supervised at all times during all school activities, including excursions and incursions.
- Teacher aides and volunteers are not legally permitted to assume full responsibility for students and must work under the direction/supervision of teachers. Teacher aides may supervise students or provide individual programs or support small groups of students without a teacher present providing a teacher is within earshot and/or visual view to render assistance if or when required. There are telephones in each room of the school and teacher aides may use the telephone to call for assistance if required. Education Support Staff such as student wellbeing officers have a higher level of duty of care than teacher aides (as there is a variation in the dimensions of work – refer to *Victorian Government Schools Agreement 2017*).
- Teacher aides should not be making resources during teaching time as aides are employed primarily to support with the implementation of educational programs. If there are reduced numbers of students and aides are not required during teaching time, teachers should inform leadership so that aides can be redeployed elsewhere in the school.
- Teachers must not complete programming planning or make resources during teaching time; teachers should attend to these tasks before/after school or during non-face to face teaching time.
- 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-pupil relationship.
- 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.
- Staff members are 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 leading teacher, student wellbeing and transition coordinator) specified for them by the Principal.

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- 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.

## **PERSONAL CARE/TOILETING**

Teachers have primary legal duty of care for students and should, where possible, be in attendance in the classroom. Therefore, any personal care such as attending to a sick child or a child who has had a toileting accident should, where possible, be provided by teacher aides. Student personal/attendant care is part of the teacher aide role so there is an expectation that teacher aides undertake these duties (please refer to the Roles and Responsibilities Handbook).

## **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 of 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 known bully on a school bus may require the school to suspend or refuse to transport the bully. In other instances, the school may not control the activity, and the reasonable measures available to it will be limited.

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 the phone to contact a leading teacher, or principal, or contact the teacher in the next room, or send a teacher aide for assistance.
- No student should be left unsupervised outside the classroom as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted within the classroom or educational environment under the direct supervision of the teacher.

## **MOVEMENT OF CHILDREN**

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- Care needs to be taken in allowing students to leave the room to work in other areas of the school, for example, completing jobs such as collecting or distributing notices.
- Use of students as monitors outside the room during class time must only occur with the approval of a member of the sub-school principal.
- Discretion is to be used when allowing students to visit the toilet or go to the administration area during class time.

### YARD SUPERVISION

- Yard supervision is an essential element in teachers' duty of care. It is now clearly established that in supervising pupils, teacher's duty of care is one of positive action.
- Be aware that children 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 school requires the teacher to fully 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 CLTC 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 classroom teacher and/or leading teacher.
- Be alert and vigilant -intervene immediately if potentially dangerous behaviour is observed in the yard - enforce CLTC behaviour standards and logical consequences for breaches of safety rules.
- Teachers should always be on the move, alert and highly visible. Do not use yard duty time to have discussions with colleagues.

### EXCURSIONS AND INCURSIONS

- Staff must:
  - be aware that children are usually less constrained and more prone to accident and injury than in a more closely supervised classroom

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- 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 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
- 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 school.
  - Arrangements will be made for students not attending to continue their normal program at school 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 school to inform the sub-school leader, assistant principal and/or principal of the new arrival time so that parents 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 whenever possible.
  - All staff must follow the DET guidelines when organising an excursion or incursion. All procedural steps contained in the School Excursions and Incursions Policy and Procedure outlines must also be followed.

### **INFORMING STAFF OF THE LEGISLATIVE LIABILITY OF DUTY OF CARE**

All staff at CLTC will be informed of their legal requirement via:

- A copy of this document will be placed in School Documents on SharePoint and provided to each CLTC staff member at the first staff meeting at the commencement of the school year and posted on the College intranet (Compass).
- New staff will be informed of their Duty of Care as part of the school's Induction Program.
- Duty of Care will be an agenda item at staff meetings and staff will be directed to familiarise themselves with the DET *School Policy and Advisory Guide: Student Safety*.
- Staff will complete a risk assessment, including duty of care, when completing planning for excursions and incursions.