

<b>Scope</b>	All School community members - staff, students, parents / guardians, School Board members.
<b>Responsible Officer</b>	Principal
<b>Contact Officer</b>	Principal
<b>Authorisation</b>	School Board
<b>Date Introduced</b>	May 2018
<b>Next Review Date</b>	July 2021  This policy will be reviewed every three years, or as required by legislation.
<b>Relevant Legislation or Source</b>	Education and Training Reform Regulations 2017 (Vic) Occupational Health and Safety Act 2004 (Vic) Wrongs Amendment (Organisational Child Abuse) Act 2017
<b>Linked SPLS Policy</b>	Supervision, OHS, Tour/Camp/Excursion/Incursion, Visitors and Volunteers
<b>Linked SPLS Procedure / Guidelines / Plans</b>	Tour/Camp/Excursion/Incursion
<b>Linked SPLS Forms / Checklists / Registers</b>	
<b>Key Words</b>	Duty of Care, Supervision
<b>Destination / Storage</b>	Shared Google Drive, Staff Room
<b>Communication</b>	Staff induction, cyclical staff training/meetings

<b>Revision / Modification</b>			
<b>Date</b>	<b>Version</b>	<b>Summary</b>	<b>Policy/Procedure</b>
01/05/2018	1.0	New policy	Student Duty of Care Policy
18/11/2021	1.1	Reviewed by School Board	Student Duty of Care Policy

## **POLICY STATEMENT**

### **1. RATIONALE**

Duty of care is a legal concept that has its origins in the common law principle of negligence. Student duty of care not only underpins, but to a large extent drives, many of St Peter's Lutheran School's policies and practices.

This policy attempts to explain, in plain English:

- What "duty of care" owed to students means;
- The impact of civil liability laws;
- 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.

The Victorian Registration Standards (sch 2 cl 12) require that the School must ensure that the care, safety and welfare of all students attending the School is in accordance with any applicable state or Commonwealth laws, and that all staff are advised of their legal obligations under those laws.

Under the Guidelines the School is required to provide evidence in the form of the School's policies and procedures with respect to the duty of care owed to students.

### **2. PURPOSE**

The purpose of this policy is to explain to our School community the non-delegable duty of care obligations that all staff at St Peter's Lutheran School owe to our students and members of the school community who visit and use the School premises. To ensure that staff have an understanding of their duty of care to students, and behave in a manner that does not compromise these legal obligations.

### **3. POLICY**

"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. As part of that duty, staff 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 staff should reasonably have foreseen) and against which preventive measures could be taken.

The reasonable steps that St Peter's Lutheran School may decide to take in response to a potential risk or hazard will depend on the circumstances of the risk.

This will involve consideration of the following factors:

- identifying the risk of harm
- the probability that the harm would occur if care were not taken
- the likely seriousness of the harm
- the social utility of the activity that creates the risk of harm.
- the burden of taking precautions to avoid the risk of harm

The principal is responsible for making and administering such arrangements for supervision as are necessary according to the circumstances 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.

St Peter's Lutheran 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
- Child Safe Standards
- External Providers
- Emergency Management
- Volunteers
- Visitors
- Working with Children Checks
- Mandatory Reporting
- Occupational Health and Safety

Staff at St Peter's Lutheran 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. We also understand 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 the community suffering injury or damage because of the state of the premises.

Staff at St Peter's Lutheran School acknowledge that, as their duty of care is non-delegable, they 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 students. Our Visitors and Volunteers Policy and Tour/Camp/Excursion/Incursions Policy includes information on the safety and care of students when engaged with external providers.

St Peter's Lutheran School has zero tolerance for child abuse and is committed to meeting the requirements of Ministerial Order 870 and the Child Safe Standards. Mandatory Reporting is vital to ensuring that any instances of child abuse are reported according to the Child Safe Standards. It is important that organisations are subject to a well-defined legal duty to prevent child abuse within organisations. A new statutory duty of care under the Wrongs Amendment (Organisational Child Abuse) Act 2017 (see Part XIII of Wrongs Act 1958) has therefore been created to ensure there is a clear legal duty placed on organisations to take reasonable steps to minimise the risk of child abuse, perpetrated by organisational representatives.

## 3.1 Duty of Care owed to Students

St Peter's Lutheran School, its Principal and its staff owe a duty to take care of students whilst they are involved in School activities, or are present for the purposes of a School activity.

The duty requires them to take reasonable steps to minimise the risk of reasonably foreseeable harm, 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
- ensuring that medical assistance is provided to a sick or injured student
- managing employee recruitment, conduct and performance.

This duty of care is **non-delegable** meaning that it cannot be assigned to another party.

In accordance with the Guidelines, the School's duty extends to taking:

- reasonable measures, with regard to all the circumstances, to protect students from risks of harm and injury that should have been reasonably foreseen; and
- take reasonable care that any student (and other person) on the premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the premises.

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.

## 3.2 Standard of Care: Teaching staff

The standard of care required is that of a 'reasonable' teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes exercising their professional judgement. The duty owed to students is not an absolute duty to ensure that no harm will ever occur, but a duty to take reasonable care to avoid harm being suffered.

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 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 class or leaving a class early.
- arriving late to scheduled timetabled yard duty responsibilities.

- failing to act appropriately to protect a student 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 students after the bell has sounded.
- leaving students unattended in the classroom.
- failing to instruct a student who is not wearing a hat to play in the shade.
- ignoring dangerous play.
- leaving the school during time release without approval.
- inadequate supervision on a school excursion.

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 subject teacher) specified for them by the principal. Teachers must ensure that the advice they give is correct. Teachers should not give advice in areas outside those related to their role where they may lack expertise.

### **3.3 Standard of Care: Support Staff, Volunteers & External Providers**

Non-teaching staff, volunteers (including parent volunteers) and external providers also owe a modified duty of care to protect students from risks of harm that reasonably ought to be foreseen. This duty is only undertaken when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or provider, and accepted by that individual.

For example, a teacher may ask a non-teaching staff member to accompany a student to a different area of the School. While normally, this staff member may not owe a standard duty of care to that student, as they have accepted the duty to care for and supervise the student passed from the teacher, they now must protect that student from foreseeable risks of harm.

### **3.4 Students' Individual Circumstances**

Individual circumstances will determine what constitutes reasonable care. The following issues may be considered in assessing the reasonableness of the level of care in any particular circumstance:

- the student's age, experience and capabilities: younger students require more care than mature students;
- physical and intellectual impairment: students with disabilities are exposed to higher levels of risk of injury than students without a disability;
- medical condition: special care must be taken to protect students with known, or ought to be known, medical conditions which expose them to a higher risk of injury (e.g. asthma or epilepsy);
- behavioural characteristics: the level of care is increased where students are known to behave in a manner that increases the risk of injury;
- the nature of hazards present: increased care is required if the School activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment;
- any conflicting responsibilities the School or teacher may have; and
- normal practices and procedures within the School.

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

### **3.5 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. Staff are responsible for their students at all times.

### **3.6 Civil Liability Laws**

The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.

These laws limit liability in certain circumstances including, in broad terms:

- the School does not owe a duty of care to warn of an “obvious risk”; and
- the School will not be liable for harm suffered as a result of the materialisation of an “inherent risk”.

The existence of civil liability laws means that issues of liability for student care claims in Australia will ultimately be determined by a complex mixture of legislation and common law (judge's decisions).

### **3.7 Discharging Duty of Care Responsibilities**

In discharging duty of care responsibilities, the School and teaching staff must exercise professional judgment to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students' independence and maximising learning opportunities.

Non-teaching staff, volunteers and external providers must exercise judgment appropriate in the circumstances.

To assist the School to discharge its safety responsibilities, St Peter's Lutheran School has developed an Occupational Health & Safety Program through which we identify potential safety hazards and analyse them in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur. A similar risk based approach is taken with respect to Student Duty of Care, with the definitions of likelihood and consequences together with the Risk Matrix used in our Workplace Safety Program, for the purpose of assessing student safety risks.

Against each identified student safety hazard it is the School's policy to develop risk controls and/or treatment plans. Risk controls often take the form of documented policies that are made available to all School staff through the School intranet.

It is important that all staff consistently enforce School rules and safety policies, and actively engage in ensuring the physical and emotional wellbeing of students.

## **4. IMPLEMENTATION**

The following instructions and notices apply to all staff:

### **4.1 Classroom Supervision**

- Staff must not leave the classroom unattended at any time during a lesson.
- It is not appropriate to leave students in the care of support 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 for the Principal or Head of Campus or contact the teacher in the next room. (if appropriate – send another student for assistance).
- No student should be left unsupervised outside the classroom as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted by sending a student to a colleague's classroom, or to the Head of Campus or Principal. This should be accompanied by documentation and appropriate follow up.

### **4.2 Movement of Students**

- Care needs to be taken in allowing students to leave the room to work in other areas of the school.
- Discretion is to be used when allowing students to visit the toilet during class time.

### **4.3 Yard Duty Supervision**

- Yard duty supervision is an essential element in teachers' duty of care. It is now clearly established that in supervising students, the teacher's duty of care is one of positive action.
- Be aware that students 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 guidelines (including wearing high vis vest and medical bum bag) 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 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 Daily Organiser, or Head of Campus.
- Be alert and vigilant - intervene immediately if potentially dangerous behaviour is observed in the yard - enforce behaviour standards and logical consequences for breaches of safety rules.
- You should always be on the move and highly visible.

#### **4.4 Excursions, Incursions and Camps**

- Be aware that students are usually less constrained and more prone to accident and injury than in a more closely supervised classroom.
- 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 camps and excursions outside the School require the teacher to fully comply with safety 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 safety 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 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 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 or be at home with their parents.
- 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 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. Staff are to walk to the middle of the crossing to ensure visibility and orderly crossing. Other staff control the flow of students across the road.
- All staff must follow the safety guidelines when organising an excursion, incursion or camp. All procedural steps contained in the Tour/Camp/Excursion/Incursion Policy and Procedure outlines must also be followed.

St Peter's Lutheran School Staff are required to ensure that they meet the requirements of Ministerial Order 870 and the Child Safe Standards which applies to all staff, contractors, volunteers and any other member of the school community involved in child-related work with students of the School.

#### **4.5 Communication**

All staff will be informed of their legal requirement via:

- All staff will be directed to read this document at the first staff meeting at the commencement of the school year, and this policy will be on the Shared Drive.
- New staff 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, excursions and incursions.

#### **4.6 Reportable conduct scheme**

A Victorian reportable conduct scheme commenced operation on 1 July 2017, and it is administered by the Commission for Children and Young People.

The scheme requires organisations that have a high level of responsibility for children to report allegations of child abuse and child related misconduct to the Commission for Children and Young People. Central oversight of how organisations respond to allegations of reportable conduct helps embed a child-safe culture across all organisations.