



Atlantis Beach Baptist College

Duty of Care to Students

Title of Policy/Procedure	Duty of Care to Students
Endorsed by	Principal
Reviewed	November 2017
Next review date	November 2018
To whom issued	College staff and Community

Duty of Care to Students

All professionals involved in education are expected to exercise a very high standard of care for the young people in their charge. Educators need to be aware that in recent years, an increasingly litigious environment has imposed more onerous duties of care and supervision on teachers, administrators and schools. This is due to changing attitudes, enhanced requirements for accountability, and increased areas of regulation and a greater awareness of the individual's legal rights.

Duty of care requires schools and teachers to take all responsible 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 will also owe a duty of care to students.

Legal risks cannot be eliminated but they can be managed. The College has a range of policies and procedures which manage risk and ensure that teachers meet their duty of care obligations.

1.0 Duty of Care

The school is under a duty to take reasonable care to ensure that it employs competent teachers and provides safe premises. The school will be vicariously liable for the actions of the teachers whilst they are acting in the course and scope of their duties as an employee of the school.

1.1 The traditional view has been that a teacher's duty is to take such care of the students in the teacher's charge as a careful parent would take of his/her own children, and that the standard of care is that of a reasonably prudent parent.

1.2 More recently, standards have become more stringent. Schools and teachers are now expected to take reasonable measures to protect students in their care from risk of injury that could reasonably have been foreseen. Recent court cases indicate that affirmative/pre-emptive action is expected – schools and teachers must be proactive in taking reasonable steps to prevent reasonably foreseeable risks of injury or harm. The adequacy of the supervision provided is usually the criterion by which liability will be measured. A student who is injured and whose parents take action will be required to show that the supervision which should have been provided would more probably than not, have prevented the injury occurring.

1.3 In *Evans v Minister of Education (1984)* a decision of the Supreme Court of Western Australian, a boy was waiting for a teacher with the rest of his class outside the classroom. Several boys were fooling around and the plaintiff was struck in the eye by a spike from a shrub thrown by another student. The court found the supervision was inadequate because the teacher was five minutes late to class. The court regarded this as too long a period to leave students unsupervised. The court held that the teacher should have known that unsupervised students would engage in "horseplay" that carried a foreseeable risk of injury occurring.

1.4 In the article "The case of the rock throwing waggoner" it is noted that "the injured student could have sued the teacher who did not notice that he was absent from class" (P21).

The same article (P22) also notes that::

"The school should have noticed [the students] unexplained absence and should have sent teachers to look for them. However, it would have been very difficult to find them. Regardless of that fact, the school clearly did not do its best to supervise the students and to ensure that everyone was in class".

The article concludes:

"...it is very disturbing that a truant can receive \$221,079. This article has opened my eyes as a teacher to the possibility of litigation against me, even when I am not present when the injury takes place. I now make sure that I mark the roll carefully at the beginning of each class and follow up any unexplained.

1.5 In determining whether a breach of duty has taken place, a court will consider whether the staff member should have foreseen that their conduct, or failure to act, involved a risk of injury/harm to the student, or put the safety and welfare of the student at risk.

1.6 A court may ask what steps a reasonable staff member would have taken in response to that risk, having regard to:

- the age, experience and capabilities of the students
- the magnitude of the risk
- the degree of probability of its occurrence
- the difficulty and inconvenience of taking alleviating action
- any other conflicting responsibilities which the school or teacher may have
- best professional practice
- evidence of existence of organisational policies and procedures and degree of compliance by the individual teacher.

1.7 It is important to note that the courts acknowledge that accidents can happen; however, the court will scrutinise every detail of a teacher's action or failure to act, and most, if not all, risks should be foreseeable by the diligent and prudent teacher.

1.8 Examples of breach of Duty of Care, include:

- the failure to take sufficient care for a student's safety during school hours, resulting in the student injuring him/herself; e.g. an accident after a student has been let out of class early; an injury caused or sustained by a truant who has not been immediately identified and followed up; an accident occurring when a teacher is late to Connect or a class; a teacher late for yard duty during which time an accident occurred
 - the failure to exercise sufficient control of the behaviour of students either before, during or after school and which resulted in one student injuring another; e.g. teacher failing to act when students were throwing objects during recess resulting in an eye injury; teacher without adequate classroom control - students fooling around in class with a resultant injury
 - the failure to identify or to institute effective measures to alleviate bullying against individual students. Several recent cases have been brought against schools which have not taken action to restrain the aggressive or inappropriate activity of a student known to be a bully, or which failed to provide a hostile-free, safe environment for a student
 - the failure to take into consideration the age of the students when showing films or video clips to a class. All material should be screened for content and rating prior to being shown, and if need be, parental permission sought prior to viewing
 - discriminatory conduct by staff – for example, failure by a teacher to be aware of and provide adequately for a student with disabilities or learning difficulties; homophobia/racist attitudes and behaviours directed at students
 - the failure to act where there is a reasonable suspicion of abuse of a student, or a disclosure of abuse by a student to a staff member
 - the failure to undertake adequate planning and supervision while on a school excursion, which results in injury to a student.
-

2.0 Teacher Registration Board WA and WWC Check

2.1 Who is required to get a WWC Check?

WWC Checks are required by volunteers, employed and self-employed people in 'child-related work'. The College ensures that the employees and volunteers who need the WWC Check do have a current one, or have proof that they have applied for one.

Work is 'child-related work' if the usual duties of the work involve, or are likely to involve, contact with a child in connection with one of the categories covered in section 6 of the Working With Children (Criminal Record Checking) Act 2004 (The WWC Act). People who are not in 'child-related work' as defined under the Act are not eligible for a Check and should not apply.

2.2 Who does not need a WWC Check?

There are also some situations where exemptions apply under the legislation. These exemptions mean that the following persons are not required to apply for a Working with Children Check and should not apply:

- volunteers and students on unpaid placement who are under 18 years of age;
- parents volunteering at a school in which their child is enrolled (This exemption does not apply to parents volunteering in child-related work at overnight camps attended by their children);
- short-term visitors to WA carrying out 'child-related work' during the period of 2 weeks after their arrival in Western Australia, and for no more than 2 weeks in any period of 12 months.

While parent volunteers are exempt from obtaining a WWC Check, the school has its own Volunteer Confidential Declaration Form (Excursions Policy), that we require volunteers to complete.

3.0 Liability of teachers

A teacher's duty of care is not limited to specific school activities such as excursions and incursions, it remains at all times whilst the student is in the teacher's care. A teacher's duty of care also includes being aware of and implementing school policies affecting students' safety and welfare eg. Bullying, Occupational Health and Safety, Student Health, supervision ratios, safety of equipment and grounds.

3.1 Duty of care is non-delegable. Duty of care requires the teacher to take all reasonable measures to ensure the safety and welfare of students, and this overall responsibility cannot be delegated to parents, volunteers or other contracted staff. A school/teacher does not discharge duty of care obligations simply by employing competent teachers or outside service providers.

The onus to fulfil duty of care obligations to students and to ensure that reasonable care is taken at all times, remains with the school and individual teacher.

3.2 It is clear that whenever, and wherever, the student-teacher relationship is in existence, a teacher must exercise a high standard of duty of care, with its associated standards of professionalism, foresight, supervision, diligence and risk management. The concept of duty of care does not, however, prescribe what steps are required of the teacher who owes the duty of care, beyond a requirement that the teacher must take reasonable care in all circumstances. The law does not provide a duty of care checklist or instruction manual. To make it more difficult, the question of whether the duty of care has been breached is determined by others, with the benefit of hindsight.

3.3 College policies, procedures and directives provide clear standards which, when implemented, ensure that a teacher meets his/her duty of care obligations.

3.4 In the event that a breach of duty action is brought against a staff member, the College would generally be vicariously liable for the action and handle the action on behalf of the teacher. Teachers need to understand however, that failure to comply with College policies, procedures and directives relating to the safety and supervision of students may lead to an imposition of personal liability by the teacher for any resultant injury to a student, and a personal assumption of negligence on the part of the teacher. If it were established, for example, that a staff member had disregarded an instruction or College procedure, it would be possible for the employer's insurer, where negligence was established, to bring a claim against a staff member to recover costs.

4.0 Related College policies and documents

4.1 It is the duty of all ABBC teaching staff members to study and fully implement, all College policies and procedures pertaining to student duty of care including but are not limited to:

- Student Behaviour Management Plans
- Yard Duty Instructions
- Camps Policy
- Excursion Policy
- College Staff Handbook
- Student Organiser/SEQTA
- Attendance Policy
- Bullying Prevention Policy
- Evacuation Procedures
- Child Protection Policy
- Individual Documented Student Plan
- Emergency and Critical Incident Policy
- Emergency and Critical Incident Manual
- Co-curricular and After Hours Supervision of Students Policy
- Equal Opportunity Discrimination and Harassment Policy
- Student Health Policy

4.2 The maxim, "ignorance [of the law] is no excuse", applies to all College employees and to all College policies, procedures and directives, including all those pertaining to the duty of care to students.