

## General Duty of Care Policy

### Introduction

Child Side School is committed to ensuring the safety and wellbeing of the children in its care and honouring and abiding by its Duty of Care obligations.

### Scope and Application

This policy applies to all employees, parents, children, volunteers and community members of Child Side School. This policy will be reviewed and amended in accordance with Child Side School Policy on Policies and Policy Guidelines and Procedures Contents Schedule.

The use of the word child/children in this policy refers to students in the context of the school environment.

### Related Legislation/Guidelines

- Working with Children (Criminal Record Checking) Act 2004
- Volunteers (Protection from Liability) Act 2002 (WA)
- Work Safety and Health Act 2020
- Civil Liability Act 2002
- Occupiers Liability Act 1985

The following sections of the School Education Act and Regulations apply only to government schools, however, the duty of care issues are also relevant to non-government schools.

- School Education Act (WA) Section 63 (1) and Section 64 (1)
- School Education Regulations 2000 (WA), Regulation 38

### Related Policies

- Guiding Children's Behaviour
- Anti-Bullying Behaviour
- Child Protection
- Child Code of Conduct Kindy – Yr6
- Young Adolescent Code of Conduct
- Parent Code of Conduct
- Staff Code of Conduct
- Playground Supervision
- Incursions
- Excursions
- Nutrition, Health and Hygiene
- Computer and Internet
- Literature and Television Viewing

- Work Health and Safety
- Risk Management
- Sun Protection
- Sickness and Accidents
- Emergency Action
- Asthma Care
- Transport in Private Vehicles
- Access to Students
- Volunteers

## **Policy Statement and Guidelines**

A Duty of care can arise in a variety of circumstances. The standard of the duty of care will vary depending on individual circumstances. In order to meet requirements for Duty of Care the school will:

1. Develop and regularly update a set of comprehensive policy, guidelines and procedures statements.
2. Provide opportunities for appropriate staff Professional Development.
3. Regularly inspect the School campus, including buildings and equipment, to identify risks to children, staff, parents, visitors and eliminate or minimise these risks as soon as is possible.
4. Ensure appropriate short, medium and long term planning occurs at the Governing Council Level to minimise risks.

## **Staff members are required to:**

1. Fully implement all School Policies, Procedures and Guidelines, including ensuring appropriate supervision of children at all school activities.
2. Access and implement Professional Development when required to do so by the school.
3. Access all school activities which they are responsible for and to plan for safety and risk minimisation; include an Emergency Plan whenever appropriate.

The staff of Child Side School owes a duty to take reasonable care for the safety and welfare of all students in our school. This expectation of this duty and the application of this Policy is also extended to all other organisations (eg Playgroup) who may use Child Side School facilities either in or outside of normal school hours. The duty of care exists when the teacher/student (educator/child) relationship is established therefore a duty of care for all students at school exists at all times.

The duty requires the School and its educators to take all reasonable steps to ensure the safety and welfare of the children from both known and reasonably foreseeable risks of harm and/or injury. In particular instances, non-teaching staff, volunteers and external providers will also owe a duty of care to children.

When organising activities for the children to participate in, the educator needs to balance the risk involved in the activity with what the children will learn from undertaking the activity in order to fulfil their duty of care obligations. Maximum emphasis is placed on the safety and well-being of all children and staff at the School or at school sanctioned events.

Incursions, excursions and interactions with the Playgroup or any other visiting groups are to be regarded as an extension of the School. The same 'code of conduct' expected during school

hours is expected of all children, staff and supervisors for the duration of an incursion, excursion, interaction or visit

The term '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.

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

An educator owes a duty to children to take reasonable care to protect them, from a known or a reasonably foreseeable risk of harm and/or injury. Discharge of this duty requires an educator to take such proactive measures as are reasonable to prevent harm and/or injury to a child.

### **Reasonable Care**

The concept of 'duty of care' is based on reasonable care. What is considered reasonable care will vary depending on all the circumstances.

Listed below are some factors to consider when assessing the 'reasonableness' of the level of care required to a particular child. This list is only a sample of the factors to consider and should not be thought of as a finite list.

- Child's age, experience and capabilities
  - the level of care will generally be greater the younger the child.
- Physical and intellectual impairment
  - a child with a disability is generally at greater risk of injury than a child without a disability. This could be due to a physical inability to complete the activity without difficulty or an intellectual inability to appreciate the risks involved.
- Medical condition
  - particular medical conditions including conditions such as asthma and epilepsy require special attention to ensure that they are not exposed to a greater risk of injury.
- Behavioural characteristics
  - if a child is known to behave inappropriately then the level of care increases.
- Nature of the activity and the environment in which the activity is held
  - school activities with a higher level of risk and held in hazardous environments require a higher level of care.
- School policy and procedures
  - following the School's normal practices within the various policies and procedures will ensure that the educator is adhering to all the steps required.
- Assessing the level of risk involved in any individual activity
  - probability of the risk occurring;
  - magnitude of the risk;
  - expense, difficulty and inconvenience involved in alleviating the risk.

While duty of care responsibilities may impose onerous obligations on the School and its educators, these obligations should not discourage the staff from instigating extracurricular activities. What is required is an approach that assesses the risks by reference to all relevant factors and, assuming the risks are not so great as to rule out the activity, to impose appropriate controls and safeguards.

It is important to understand that what is 'reasonable' will vary from circumstance to circumstance. For example, taking a primary school class on a beach excursion is completely different to taking members of a high school swimming team on a beach excursion. What would be considered to be reasonable supervision for one will be wholly inadequate for the other.

### **Duty of care owed by Teaching Staff**

The educator's duty of care responsibility is automatic, arising from the educator/child relationship. As stated earlier, the level of care is based on what is considered 'reasonable'. This will depend on a variety of factors such as age of children, behaviour of children, nature of activity, location of activity etc.

An educator's duty of care is not limited to specific school activities such as excursions incursions or interactions and visits from other groups, it remains at all times whilst the child is in the educator's care. An educator's duty of care also includes being aware of and implementing school policies affecting children's safety and welfare such as bullying, work health and safety, children's health, supervision ratios and safety of equipment and grounds.

Generally, the duty of care owed by educators to children is non-delegable however, in certain situations the educator may delegate this duty of care to non-teaching staff, volunteers and/or external providers.

### **Duty of care owed by Non-Teaching Staff, Volunteers and External Providers**

The Department of Education and Training policy describes non-teaching staff, volunteers and external providers as follows:

- *Non-teaching staff*  
Employees of the School who work on the School premises and are not part of the teaching staff. Eg. librarians, laboratory assistants, examination supervisors.
- *Volunteers*  
An adult or organisation who/which offers services for school activities but receives no remuneration from the School for the services provided. Eg. parents/guardians and other relatives, community members, employers who accept students on work experience, student teachers.
- *External Providers*  
A business/individual paid by the School to provide a venue, service and/or expertise appropriate to a particular school activity. Eg. private dance teacher, Perth Zoo, AQUA, Sci Tech.

Generally, non-teaching staff, volunteers (eg. parents) and/or external providers must take reasonable care to avoid doing things that could reasonably be foreseen as causing harm and/or injury to others (including children).

Non-teaching staff, volunteers (eg. parents) and/or external providers are not generally personally responsible for children and do not have the same duty of personal care to children as do educators.

However, in certain situations and under certain conditions (for example whilst in small groups on a camp or excursion) educators may delegate their duty of care to non-teaching staff,

volunteers (eg. parents) and/or external providers in which case they will then owe the same level of care to children as an educator.

Before the School and/or the educator delegate the duty of care responsibility to non-teaching staff, volunteers (eg. parents) and/or external providers, it is necessary for the educator to ensure the following are satisfied as a failure to do so could result in a breach of the School and/or the educator's duty of care to the children:

- That the non-teaching staff, volunteers (eg. parents) and/or external providers are suitable for the task being delegated.
- That the non-teaching staff, volunteers (eg. parents) and/or external providers involved are covered by either the School's insurance or have in place their own adequate insurance cover.
- That the non-teaching staff, volunteers (eg. parents) and/or external providers agree to assume this personal duty of care for the children.
- That the educator has provided the non-teaching staff, volunteers (eg. parents) and/or external providers with clear instructions as to the level of care required.

Whenever practical these instructions for caring for children, the level of care required and the acceptance of this responsibility are to be recorded in writing and signed by the non-teaching staff, volunteers (eg. parents) and/or external providers.

The School is vicariously liable for a volunteer where the work performed by the volunteer is done on behalf of the school and is done in good faith by the volunteer.

### **Governing Council Duty of Care**

The school Governing Council has a duty to ensure that reasonable care is taken of its students whilst they are on the school premises during the hours when the school is open and during school-related off-site activities.

### **POLICE CLEARANCES and WORKING WITH CHILDREN CLEARANCES**

The School Education Act 1999 s160 (1)(e) states that:

*"The Minister is to register the school if satisfied that –The school will provide satisfactory levels of care for the children concerned."*

The guidelines for staff recruitment states:

*"All teaching and non-teaching staff, as well as volunteers require appropriate police clearance."*

The School has included a Working with Children Clearance, Federal Police Clearance and/or a current financial TRB membership as part of staff recruitment.

All external providers for Child Side School activities must provide a current national police certificate or a Working with Children Card. Volunteers are to complete a Confidential Declaration Form 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.

### **GUIDELINES FOR ACTIVITIES**

#### **Key questions**

A range of questions needs to be asked and acted on when organising any activity. The key questions are likely to include:

1. What is the purpose of the activity?
2. Who is in charge?
3. What specific learning experiences do we wish each student to participate in?
4. What are the capabilities of each student in each of the specific activities we wish them to participate in?
5. What are the risks involved in those activities?

## **Risk Management**

Risk Management is an integral part of the planning process for any activity that involves risk. Risk management is not about risk aversion but rather about controlling risks. See *Risk Management Policy, Incursions and Excursions Policy*.

## **Medical Procedures**

All staff must be familiar with the School's Sickness and Accident Policy. This document includes:

- Procedure for basic first aid;
- Accident/Incident Report Book;
- Medical Management Plans (Asthma, Anaphylaxis, Diabetes)
- Child Side Medical Book

## **Programmes**

All off-campus activities must be fully documented. The Educator in charge of the activity or excursion is required to submit an Excursion Management Plan for approval from the Senior Educator and Administrator.

See *Excursions and Incursions Policy*.

## Version Management

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