

 DoE Members

## Duty Of Care And Additional Responsibilities



The following document is a summary of general responsibilities and duties of DoE staff. It is not intended to be a comprehensive account and as such any members who are seeking more detailed advice should access the documents listed at the end of this fact sheet and/or contact the union to discuss their specific circumstances.

### Duty of Care

Staff in educational environments owe a duty of care to students. This is a duty imposed by law to take reasonable care to minimise the risk of foreseeable harm to another person. It is important to note that the duty owed to students is not a duty to ensure that no harm will ever occur, but rather that reasonable care to avoid reasonably foreseeable risk of harm is taken.

Principals and teachers are held to a high standard of care in relation to students. The duty requires principals and teachers to take all reasonable steps to reduce risk, including:

- 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.

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 students for swimming lessons than when teaching the same group in the classroom.

The important factor in all circumstances will be what precautions the school could reasonably be expected to take to prevent injury from occurring. This involves 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.

Duty of care may arise before or after formal school hours and extends beyond students under a teacher's immediate control to students that they are reasonably able to control at any given instant.

Accidents can still happen, even to the most experienced of staff and in the best regulated classrooms. However, you will not have breached your duty of care unless you can be proved to have been negligent.

### Negligence is:

- an action which could reasonably have been expected to contribute, directly or indirectly, to causing harm to a pupil;
- a failure to take action to prevent reasonably foreseeable harm to a pupil.

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## Unsupervised Classes

The DoE recommends that in considering whether it is reasonable to leave a class unsupervised and for how long, teachers must assess the maturity and dynamic of the students and the nature of their environment. It is not recommended that teachers leave a class unattended if they have any reason to believe that students will not behave or may misbehave in a manner likely to cause injury to themselves or others if left alone.

## Mandatory Reporting

Mandatory reporting refers to the legal requirement that specific people report reasonable suspicions of children being, or at risk of being, abused or neglected. It applies when that suspicion is formed during a person's work, regardless of whether it is paid or voluntary work. Among those mandated to report child abuse or neglect are school principals and teachers. Anyone who reasonably suspects that a child is, or has been, abused or neglected must report this to a gateway Service on 1800 171 233 or Child Protection Advice and Referral Service on 1800 737 639 and/or to police.

## Self-Harm

If a student is self-harming or at risk of self-harm, senior staff/Principal should be notified as soon as practicable. School policy and procedure should be followed.

## Administration of Medication

Authorisation by parent/s is required for the administration of all medication to students, prescribed or non-prescribed. Authorisation by a doctor, dispensing pharmacist or nurse is required from the administration of all prescribed medication to a student. If staff agree to administer medication for conditions requiring specific training in medication administration, they must be appropriately trained and accredited to do so. Staff have the right to refuse to administer medication if they feel uncomfortable or unqualified to do so. However, in an emergency the staff member may have an obligation to administer such medication.

## Protective Practices for Staff in their Interactions with Students

Employees are responsible for maintaining a professional role with students, this includes establishing clear professional boundaries for a staff/student relationship. The DoE addresses various examples of types of behaviours which are considered

inappropriate and cross these professional boundaries. These can be found in the following document (listed below) – Protective Practices for Staff in their Interaction with Students (TASED-4-3113).

One such example is inappropriate physical contact. This is defined as unwarranted, unwanted and/or inappropriate touching of a student personally or with objects (e.g. pencil or ruler) and also includes initiating or permitting inappropriate physical contact by a student (e.g. massage or tickling). Unnecessary physical contact with students should be avoided, however reasonable physical contact by a staff member to assist or encourage a student may be appropriate. This practical assistance can include, administration of first aid, helping a student who has fallen, assisting with toileting and personal care of disabled student (with an Individual learning plan), non-intrusive gestures to comfort a student who is upset, and non-intrusive touch to congratulate students e.g. hand shake.

## Using Physical Intervention

Non-physical intervention is the preferred means of managing student conduct, however, there are instances when physical intervention is reasonable. This may include, standing between students, blocking a student's path, leading a student by the hand or arm, shepherding a student away by placing a hand in the centre of the upper back, removing potentially dangerous objects, and in extreme circumstances, using more forceful restraint.

It is important to note that an employee must only use physical restraint as is reasonable in the circumstances. That is to prevent a student from causing personal injury to themselves or others, damage to the property of others or their own, threatening order and discipline at the school, attacking another student or staff member, posing an immediate danger to themselves or others, or in circumstances where the duty of care cannot be met without some form of restraint. The DoE states that appropriate physical restraint may be permitted to ensure that the employer's duty of care to protect students and staff from unforeseeable risks of injury is met.

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