

## DUTY OF CARE POLICY

### PURPOSE

ISWA acknowledges that the School and its staff owe a duty to take reasonable care for the safety and welfare of all students in the School from both known and reasonably foreseeable risks of harm and/or injury. Where delegated by teaching staff, non-teaching staff, volunteers, and external providers will also owe the same level of care to students.

### OBJECTIVES

To ensure the School upholds its Duty of Care responsibilities by outlining what this means and 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. A review of the policy will take place following every avoidable, high risk incident and revised as needed.

### DEFINITIONS

Duty of Care: a duty imposed by common law to take care to minimize the risk of harm to another.

External Provider: business/individual paid by the School to provide a venue, service and/or expertise for a school activity.

Volunteers: an adult or organisation who/which offers services for school activities but is not paid by the School, including but not limited to parents/guardians and other family members who perform regular and ongoing tasks, community members, student teachers, employers who accept student on work experience. It should be noted that ISWA does not have widespread use of volunteers.

School activity: a duty may be owed to students who arrive early for a school activity or who remain at a place after participating in a school activity and whose presence in both cases is known or ought to be known by school staff.

Reasonable Care: is the degree of caution and concern a prudent and rational person would be expected to exhibit. It is not a duty to ensure no harm will come to a student, but that care is taken to avoid harm being suffered, and will vary depending on the circumstances at the time.

### LEGISLATION

The following legislation pertains to Duty of Care responsibilities:

- Working with Children (Criminal Record Checking) Act 2004
- Volunteers (Protection from Liability) Act 2002 (WA)
- Occupational Safety and Health Act 1984 (WA)
- Occupiers Liability Act 1985
- Civil Liability Act 2002

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

of care. These laws limit liability in certain circumstances, including in the materialisation of an inherent risk or an obvious risk.

## PRINCIPLES OF POLICY

### 1. Reasonable Care

The following factors are some considerations into the determination of the 'reasonableness' of the level of care required:

- The age, experience and capabilities of the students;
- Any physical and/or intellectual impairment of the students;
- The medical conditions of the students;
- The behavioural characteristics of the students;
- The nature of the school activity and of the environment in which that activity is to be undertaken;
- Any conflicting responsibilities that the school or staff member may have;
- Any normal practices within the School's policies and procedures.

### 2. Risk Assessment

All school activities should be risk assessed using the appropriate policies before being undertaken (Refer to Risk Management Policy). The risk assessment for any individual activity should consider and address:

- The probability of the risk occurring;
- The degree of harm that could occur;
- The difficulty and likelihood of mitigating the risk;
- The expertise of the supervising staff;
- Whether the supervising staff have difficult relationships with any of the students involved.

### 3. Professional Training

Regarding the expertise of the supervising staff, the School has strict recruitment guidelines as an IB School and in accordance to legislative requirements. The Professional Development & Training Policy mandates staff to hold a current Teacher Registration and Working with Children Check, as well as having read, signed, and have access to all School policies.

### 4. Liability of Teachers

Teachers will receive instruction in duty of care legislation and their responsibilities to protect students from harm as follows:

- Duty of care is not delegable. While non-teaching staff, volunteers and external providers may be employed in activities, the supervising teacher still has the responsibility for duty of care.
- A teacher's duty of care remains at all times while the student is in the teacher's care.
- A teacher's duty of care includes teaching time, relief teaching time, supervision of activities before, during and after school and whilst on supervision yard duty.
- A teacher's duty of care also includes being aware of and implementing school policies affecting students' safety and welfare, e.g.: bullying, health, supervision ratios, safety of equipment, excursion and camps protocols, yard duty, providing appropriate medical assistance, and child protection.

- In the event that a breach of duty action is brought against a staff member, the School would generally be vicariously liable for the action.
- If, however, a teacher fails to comply with the School's policies, procedures and directives relating to the safety and supervision of students, this could 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.

#### 5. Non-Teaching Staff, Volunteers and External Providers

Generally, persons in these categories do not have the same personal responsibility and duty of care to students as teachers do. However, in certain situations and under certain circumstances it may be necessary to delegate duty of care to them. If this happens, the School and/or the teacher must ensure the following are satisfied or risk a breach in duty of care:

- The persons are suitable for the task being delegated;
- The persons are covered by the School's insurance or have in place their own adequate insurance cover;
- The persons agree to assume the personal duty of care for the students; and
- The teacher provides them with clear instructions as to the level of care required.

#### 6. Specific Policies and Procedures

Duty of Care spans a wide range of specific school policies and procedures relating to curricular and non-curricular activities, pastoral care, and the environment of the School.

It is the duty of all staff to be aware of these policies and procedures and to implement them. These include but are not restricted to the following:

- Supervision Duty
- Excursions and Camps
- Student Bullying
- Emergency Management
- Accidents and Injuries
- Child Protection
- Protective Behaviours
- Internet Use
- Discipline
- OSH
- Security

#### 7. Out of Hours Liability

The School does not have a "door to door" responsibility for its students but does have a duty of care for students in certain out of hours circumstances, such as after school activities and including school-provided transport to and

from the activity.

8. Driving Students

Teachers must only allow students to be driven by them with the knowledge and approval of the Principal and a written detailed/signed permission letter from parents.

9. Students on Campus

Teachers must ensure that students are not on school campus before 8:15 am or after 3:45 pm unless they are accompanied by a teacher or parent. If teachers are aware of such instances, it is the teacher's responsibility to report the matter to the Deputy Principal/Principal. If it is known or ought to be known that students are at school outside of those hours, it is the responsibility of the school to provide adequate supervision for that time, and a refusal to acknowledge those students will not provide a defence against liability.

Communicating the supervised hours to parents is essential for the delegation of duty of care.

<b>Policy Category</b>	Operational
<b>Date Approved</b>	10 April 2015
<b>Frequency of review</b>	As required
<b>Policy Owner</b>	Principal
<b>Amendment History</b>	
<b>Date</b>	<b>Amendment</b>
June 2017	Reviewed by Principal
April 2020	Updated for Registration