

### 1. Objective

This Duty of Care Policy applies to Cheshire School. Cheshire School employees are held to a high standard of care in relation to students. This Policy explains the legal duties owed by Cheshire School employees towards students.

### 2. Scope

The duty of care requires Cheshire School employees to take all reasonable steps to reduce risk, including:

- Provision of suitable and safe premises to ensure that persons on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done on the premises
- Taking reasonable steps to reduce the risk of reasonably foreseeable harm
- 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
- Prevention of child abuse by an individual associated with Cheshire School

In some circumstances, the school's duty of care will extend beyond school hours and outside of school grounds.

### 3. Context and Guiding Principles

"Duty of care" is an element of the tort of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

To successfully bring a compensation claim in negligence a person must establish, on the balance of probabilities, that:

- A duty of care was owed to them at the time of the injury
- The risk of injury was reasonably foreseeable
- The likelihood of the injury occurring was more than insignificant
- There was a breach of the duty of care or a failure to observe a reasonable standard of care
- This breach or failure caused or contributed to the injury, loss or damage suffered.

The fact that a duty of care exists does not mean that Cheshire School will be liable for an injury sustained by a student. In order for the student to succeed in a negligence claim, all these elements must be established.

4. Definitions

Word	Definition
<ul style="list-style-type: none"> <li><b>Duty of care</b></li> </ul>	<ul style="list-style-type: none"> <li>This is the responsibility that the Head of School and teachers have in relation to their students to take steps that are reasonable in the circumstances to protect students from risks of injury that should reasonably have been foreseen. The duty is not to prevent injury in all circumstances. It is a duty to take reasonable steps to prevent injury, which is known and foreseeable. The question of what are reasonable steps will depend on the individual circumstances of the case, and consideration of the following factors:               <ul style="list-style-type: none"> <li>The probability that the harm would occur if care were not taken</li> <li>The likely seriousness of the harm</li> <li>The burden of taking precautions to avoid the risk of harm</li> <li>The social utility of the activity that creates the risk of harm</li> <li>The duty may, in some circumstances, extend outside school hours and outside the school premises. This will depend on whether the relationship between staff and student extends to the individual circumstances, whether the risk was known or foreseeable, and whether there were any reasonable steps that could be taken to prevent the injury from occurring. The duty is non-delegable, meaning that it cannot be assigned to another party.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li><b>Supervision</b></li> </ul>	<ul style="list-style-type: none"> <li>This refers to the supervisory role of staff aimed at enhancing a student’s educational opportunities, building self-esteem, and ensuring students are safe and supported. Whilst in a supervisory role, each staff member has an obligation to fulfil duty of care requirements. Staff must comply with the arrangements for student supervision put in place by the school for all activities where the student is under the duty of care of a member of the staff.</li> </ul>
<ul style="list-style-type: none"> <li><b>School environment</b></li> </ul>	<ul style="list-style-type: none"> <li>This is any physical or virtual place made available or authorised by the school for use by a student during or outside school hours, including:               <ul style="list-style-type: none"> <li>Online school environments (including email and intranet systems); and</li> <li>Other locations provided by the school for a student’s use (including, without limitation, locations used for excursions and other events)</li> </ul> </li> </ul>

## 5. Policy

The Head of School and teachers are held to a high standard of care in relation to students. The duty requires the Head of School and teachers to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- Ensuring that Cheshire School complies with the Child Safe Standards
- Provision of suitable and safe premises to ensure that persons on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done on the 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
- Sharing information with another prescribed Information Sharing Entity (ISE) in relation to a child's wellbeing or safety, or sharing information with another prescribed ISE which may help to assess or manage the risk of family violence under the Child Information Sharing Scheme (CISS) and Family Violence Information Sharing Scheme (FVISS)
- Prevention of child abuse by an individual associated with Cheshire School

Whenever a teacher-student relationship exists, teachers have a special duty of care. Generally, teachers are expected to take such measures as are reasonable in the circumstances to protect a student under their charge from reasonably foreseeable risks of injury.

The nature and extent of this duty will vary according to the circumstances. For example, the standard of care required will be higher when taking junior students for swimming lessons than teaching senior students in the classroom.

The important issue in all cases will be what precautions Cheshire School could reasonably be expected to have taken to prevent the injury from occurring. 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 burden of taking precautions to avoid the risk of harm
- The needs of young students or students with disabilities
- The social utility of the activity that creates the risk of harm.

### 5.1 Duty of care to students outside the school

The law has established that, in some circumstances, a school's duty will extend beyond school hours and outside of school grounds. The duty will be extended to outside school hours and premises when the relationship between the school and the student requires it in the particular circumstances. For example, in some circumstances, schools may be liable for injury sustained by students in the playground before school begins for the day, particularly if it occurs during the period of time for which the school yard is supervised.

In one case, a non-government school was found liable for injury to a primary student at an unsupervised bus stop, approximately 350 metres from the school and located outside a secondary school. School staff knew that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm to students at this bus stop while they were gathered there. In addition, a teacher from the primary school witnessed the incident but did not intervene. The court found that the teacher-student relationship was still in existence at the time of the injury, and therefore the non-government school authority had a duty of care.

Whether the duty extends outside of school grounds therefore depends on all the circumstances of each individual case and the school's knowledge of any dangers.

### 5.2 Negligent Advice: Teachers

Teachers are frequently called upon to advise students. When doing so teachers should:

- Limit their advice to students to areas within their own professional competence and given in situations arising from a role specified for them by the Head of School
- Ensure that the advice they give is correct and in line with the most recent available statements from the school
- Avoid giving advice in areas unrelated to their role or where they may lack experience.

## 6. Associated Procedures

N/A

## 7. Related Policies

- 001.2 Child Safe Policy and Procedure
- 001.8 Child Safety Code of Conduct
- 001.1 Child Protection Policy and Procedure
- 05.004 Mandatory Report Policy
- 001.25 Reportable Conduct Scheme Policy and Procedure
- 05.006b Supervision of Students Policy
- 05.006a Restraint and Seclusion Policy and Procedure
- 05.006c Anti-Bullying and Non-Violence Policy
- 05.006g Cyber Safety Policy
- 05.002 First Aid Policy
- Information Sharing Scheme Policy
- 05.005b Compliments, Complaints and Feedback Policy and Procedure

**8. Relevant Legislation Sources**

- [Child Wellbeing and Safety Act 2005 \(Vic.\)](#)
- [Child Wellbeing and Safety \(Information Sharing\) Regulations 2018](#)
- [Family Violence Protection Act 2008 \(Vic.\)](#)
- [Family Violence Protection \(Information Sharing and Risk Management\) Regulations 2018](#)
- [Victorian Institute of Teaching \(VIT\) Code of Conduct and Ethics](#)
- [Working with Children Checks Victoria](#)

**9. Other Resources**

- [Child Safe Standards](#)
- [Reportable Conduct Scheme](#)
- [Child Information Sharing Scheme Ministerial Guidelines](#)
- [Family Violence Multi-Agency Risk Assessment and Management Framework](#)
- [Information Sharing and Family Violence Reforms Contextualised Guidance](#)
- [Information Sharing and Family Violence Reforms Toolkit](#)
- [Information Sharing Guides, Templates and Tools](#)