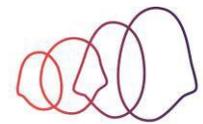


# DUTY OF CARE POLICY



Telethon Speech & Hearing

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**Topic:** DUTY OF CARE POLICY

**Responsible:** Principal

**Location:** TSH Intranet

**Approved by:** Chief Executive Officer      **Signature:** *M. J. Spencer*

**Review Date:** 3 years from procedure approval date or as and when required

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Effective Date:	April 2021	Review Date:	April 2023	Policy Version:	V6
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## 1. AIM and OBJECTIVE

The objective of this document is to set out the Duty of Care Policy for all staff who are employed in the schools programs that are run by Telethon Speech & Hearing (TSH).

TSH is committed to ensuring that reasonable care is taken for the safety and welfare of all students in the schools programs run by TSH.

## 2. GUIDELINES STATEMENT

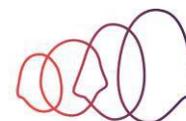
The purpose of this document is to inform staff working in the schools operating under TSH that they are under a duty to take reasonable care to ensure that it employs competent teachers and provides safe premises, and to provide the necessary information and guidelines to achieve this. The duty of care exists when the teacher /student relationship is established.

TSH 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 TSH (this may not be the case if the teacher acts with deliberate negligence).

## 3. SCOPE and APPLICATION

This policy applies to all staff employed by TSH including teachers, teacher assistants, support staff, administration staff and technical officers.

Staff located in Outpost locations should familiarize themselves with the Duty of Care Policy that applies to their workplace location.



## 4. RELATED LEGISLATION

- Working with Children (Criminal Record Checking) Act 2004
- Volunteers (Protection from Liability) Act 2002 (WA) [www.slp.wa.gov.au](http://www.slp.wa.gov.au)
- Occupational Health and Safety Act 1984 (WA)
- 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

## 5. POLICY

The school owes a duty to students to take reasonable care to protect them from a known or a reasonable foreseeable risk of harm or injury. Discharge of this duty requires a teacher to take such proactive measures as are reasonable to prevent harm and/or injury to a student.

### 5.1 DEFINITIONS

#### 5.1.1 Duty of Care

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.

#### 5.1.2 Non-Teaching Staff

The term 'Non-Teaching Staff' is used to represent employees of TSH who are employed at TSH or an offsite location, and who are not members of the teaching staff.

#### 5.1.3 Volunteer

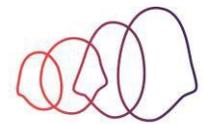
The term 'Volunteer' is used to represent an adult or organisation offering services for school activities, but receiving no remuneration from the Centre.

#### 5.1.4 Working With Children Check

The term 'Working With Children Check' is used to represent a comprehensive criminal record check for certain people in child-related work in Western Australia

### 5.2 REASONABLE CARE

The concept of 'duty of care' is based on reasonable care. It is not a duty to ensure no harm will come to a student but that reasonable care to avoid harm being suffered is taken. What is considered reasonable care varies depending the circumstances at the time.



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**The factors which should be considered when assessing the ‘reasonableness’ of the level of care for a particular student should include:**

- The student’s age, experience and capabilities: The level of care will generally be greater the younger the student
- Any physical or intellectual impairment: A student with a disability may be at greater risk of injury than a student without a disability for a particular activity.
- Medical condition: Particular medical conditions, including asthma, epilepsy and anaphylaxis, require special attention to ensure that students who are susceptible are not exposed to a greater risk of injury
- Behavioural characteristics: If a student 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 policies and procedures

While duty of care responsibilities may appear to impose onerous obligations on schools and teachers, these obligations should not discourage the school from allowing students to participate in challenging or managed risk activities. Routine risk assessment strategies and efficient mitigation processes can encourage teacher participation in activities that may appear at first to be too hard to bother with.

## **5.3 GUIDELINES FOR DUTY OF CARE OWED BY TEACHING STAFF**

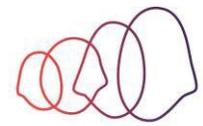
The teacher’s duty of care responsibility is automatic, arising from the establishment of the teacher/student relationship. They must take reasonable care to make sure their acts or omissions do not cause reasonably foreseeable injury to their students.

A teacher’s duty of care is not delegated to them by the parent but by the Crown and this is the reason why a teacher is expected to provide a higher standard of care than a reasonable parent. A teacher must provide a standard of care that is reasonable for a teacher to provide.

A school’s duty of care is higher than a teacher’s. A school may be vicariously liable for a teacher’s actions however in some cases the individual teacher may be liable, especially in the case of criminal conduct.

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 school’s/teacher’s duty of care also includes being aware of and implementing all school policies affecting students’ safety and welfare, providing adequate supervision, ensuring grounds and equipment are safe for students to use, choosing appropriate persons to care for students and providing appropriate medical assistance if required.

Although there may be particular circumstances that allow a school/teacher to delegate their duty of care to others it is considered prudent that a school/teacher always assumes they have a duty of care for their students. This non-delegable duty of care applies to all on and off campus situations.



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## 5.4 GUIDELINES FOR DUTY OF CARE OWED BY NON-TEACHING STAFF, VOLUNTEERS AND EXTERNAL PROVIDERS:

When non-teaching staff, volunteers and external providers agree to take personal care of students in the absence of a teacher they will owe a duty of care to the students. They must take reasonable measures to prevent harm coming to the students.

The Department of Education 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.

*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.

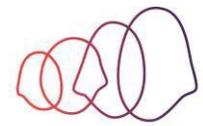
*External Providers* – a business/individual paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity, eg. private dance teacher, Perth Zoo, AQUA.

Non-teaching staff, volunteers (eg parents) and/or external providers are not generally personally responsible for students and do not have the same duty of care to students as do teachers. However, in certain situations and under certain conditions teachers may delegate a proportion of their duty of care to non-teaching staff, volunteers (eg. parents) and/or external providers. In this case the non-teacher will then owe the same level of care to students as a teacher.

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

- 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 students. They have the right to refuse unless it is part of their normal duties
- That the teacher has provided the non-teaching staff, volunteers (eg parents) and/or external providers with clear instructions as to the level of care required.

The *Volunteers (Protection from Liability) Act 2002* states that schools, that are an incorporated association under the Associations Incorporations Act 1987, are responsible for the acts of a volunteer (ie the school is vicariously liable for the volunteer) where the work performed by the volunteer is done on behalf of the school and is done in good faith by the volunteer.



## 6 PROCEDURE

- All staff members, including volunteers, are required to have WWCC and National Police Clearance.
- Roll call is done twice a day, once in the morning and once in the afternoon and is recorded using the MAZE database.
- Work Health and Safety Committee meets regularly to monitor and act on OH&S matters. This covers classrooms, administration areas and outdoor areas such as the playground.
- Safety share at staff meetings every fortnight.
- Playground duty rosters and staffing levels are developed to reflect the needs of the children.
- Regular review of all related policies e.g. Mandatory Reporting, School Bullying.
- Staff in the schools programs must be familiar with National Quality Standards and ensure that these standards are adhered to in their programs.

## 7 COMMUNICATION AND CONSULTATION

The Principal will be responsible for providing information to all staff, students and parents/guardians about the school's duty of care policy.

Volunteers and casual relief staff will be informed on arrival at the school of the duty of care policy.

## 8 FORMS / DOCUMENTATION

This document is to be read in conjunction with the following:

- Working with Children Check and Police Clearance Guidelines
- Volunteer Management Policy
- Recruitment Policy
- Onboarding Policy
- Mandatory Reporting and Child Welfare Policy

## 9 POLICY UPDATES

This policy may be updated or revised from time to time. The Centre will notify all staff each time the Policy has been updated. If you are unsure whether you are reading the most current version, you should contact the CEO or Principal.

<b>Originated</b>	Version 1	June 2011
<b>Updated</b>	Version 2	October 2012
<b>Updated</b>	Version 3	February 2015
<b>Updated</b>	Version 4	November 2018
<b>Updated</b>	Version 5	April 2019
<b>Updated</b>	Version 6	April 2021