



DUTY OF CARE POLICY

DUTY OF CARE POLICY V2

2022

1. INTRODUCTION

Chrysalis Montessori School owes a duty to take reasonable care of the safety and welfare of all students in the school. This duty requires teaching staff to take all reasonable steps to ensure students are protected from both known and reasonably foreseeable risks of harm and/or injury. The duty of care sits primarily with teaching staff due to the nature of the teacher/student relationship. In particular instances however, non-teaching staff, volunteers and external providers will also owe a duty of care to students.

In discharging a duty of care, a balance between minimising harm and maximising learning opportunities must be established.

This policy describes what 'duty of care' is, which School staff owe a duty of care to students and how duty of care actions are implemented at Chrysalis.

2. 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.

The School has a duty to take reasonable care to ensure that it employs competent teachers and provides safe premises.

A teacher owes a duty to students 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 a teacher to take such proactive measures as are reasonable to prevent harm and/or injury to a student.

Chrysalis Montessori School explicitly forbids the use of any form of child abuse, corporal punishment or other degrading punishment.

3. 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.

Listed below are some factors to consider when assessing the 'reasonableness' of the level of care required for a particular student.

- 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. This could be due to a physical inability to safely participate in an activity or the intellectual inability to appreciate the risks involved and therefore the need to exercise caution.
- 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 policy and procedures: School policies and procedures will often give guidance to the suitability of certain activities for students and the care required if they are undertaken. They must be followed.
- The supervisor's level of experience, attributes and skills" A supervisor should know, understand and be able to keep students safe in the particular environment the activity is taking place in.
- The supervisor's relationship with the students: A teacher who has a 'difficult' relationship with a student may need a different approach to their duty of care than a teacher who has a positive relationship with a student.
- While duty of care responsibilities may appear to impose onerous obligations on 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.

4. ASSESSING THE RISK OF A SCHOOL ACTIVITY

When preparing activities for students, a teacher needs to use their professional judgement to balance the risk of harm involved in the activity whilst embracing the Chrysalis values of independence and curiosity to maximise what students will learn from undertaking the activity. A teacher's professional judgement should be guided by **school policies and the schools risk assessment procedure**.

All activities should be risk assessed before being undertaken using the school risk assessment procedure (Risk Management Plan). Assessing the level of risk involved in any individual activity means, determine the probability of harm occurring, the degree of harm that could occur and mitigation required to make the activity's risks acceptable

Refer to Risk Management Policy, Risk Management Plan and Excursion Policy

5. ROLES AND RESPONSIBILITIES

5.1 Duty of Care Owed by a School

A school's duty of care is higher than that of the teaching staff. 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.

The School is responsible for employing competent teachers and establishing effective governance through the development and implementation of School policies and procedures.

5.2 Duty of Care Owed by Teaching Staff

Teaching staff refers to the Principal and teaching staff but not education assistants which are included in section 5.3

The teaching staff'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 (refer Section 3.)

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

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

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

Non-teaching staff refers to employees of the school who work on the school premises and are not part of the teaching staff, e.g. education assistants, the librarian, administration staff, Playgroup Coordinator, After School Care Director and assistants.

Volunteers are an adult or organization who/which offers services for school activities but receives no remuneration from the school for the services provided, e.g. parents/guardians and other relatives, community members, students on work experience and student teachers.

External providers are businesses or individuals paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity, e.g. private dance or music teacher, SciTech etc.

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 (refer Section 3. Reasonable Care).

Non-teaching staff, volunteers 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 and/or external providers in which case the non-teacher will then owe the same level of care to students as a teacher.

Before the teaching staff delegate duty of care responsibility to non-teaching staff, volunteers and/or external providers, it is necessary for the school and/or the teacher to ensure that the following are satisfied, as a 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 (e.g. parents) and/or external providers are suitable for the task being delegated.
- That the non-teaching staff, volunteers 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 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 and/or external providers with clear instructions as to the level of care required.

It is recommended that these **instructions for caring for students**, the level of care required, and the acceptance of this responsibility be recorded in writing and signed by the non-teaching staff, volunteers and/or external providers.

6. COMPLIANCE REQUIREMENTS

Compliance with the following legislative or government policy requirements is obligatory and outlined in detail below.

6.1 Working with Children (Criminal Record Checking) Act 2004

Working with Children Checks are required at Chrysalis for:

- All staff at Chrysalis who work with or come into contact with children.
- Relief and casual staff who work at Chrysalis.
- Volunteers and external providers who work with children at Chrysalis.

The Working with Children (Criminal Record Checking) Act 2014 aims to protect children from harm by providing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer child-related work in Western Australia.

The Working with Children (WWC Check) considers criminal records to see if people have charges or convictions that indicate they may harm a child (persons under the age of 18). A person who's WWC Check reveals a criminal history indicating that they might harm children will be prohibited from 'child-related work'.

'Child-related work' refers to work where the usual duties of the work involve, or are likely to involve, contact with a child in connection with one of 18 categories as defined by the Western Australian Government at Appendix 2.

The following parties are exempt from obtaining Working with Children Checks:

- Volunteers and students on unpaid placement who are under 18 years of age;
- Parent volunteers whose children are enrolled at Chrysalis Montessori School unless required e.g. Camps or Excursions or where the school requires the parent to have WWC.
- Short-term visitors to WA carrying out 'child related work' during the period of 2 weeks in any period of 12 months.

Exempted parties should be asked to complete a Confidential Declaration 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. The Confidential Declaration is found at Appendix 1.

Refer to the Association of Independent Schools of Western Australia Duty of Care Guidelines Section 7 Working with Children Appendix 2.

6.2 Teachers Registration Act 2012

In accordance with the Teachers registration Act 2012, all teaching staff at Chrysalis must be registered teachers.

A Criminal Record Check is a part of the Teachers Registration Board assessment process to determine whether a person is suitable for registration as a teacher. Information completed on the form will be forwarded to the CrimTrac Agency, other Australian police services or other law enforcement agencies for checking.

6.3 Police Clearances

Schools may also require all staff to also have a criminal check or police clearance. External providers who may be on the school site during 'cross over' times (eg at the commencement of their work at a time during the day when some students may still be on site) will require the school to have appropriate protocols and supervision policies and procedure in place.

7. LIABILITY

Liability in negligence cases depend upon the application of a standard of reasonableness in all circumstances (refer section 4. Determining Reasonable Care). Each case will be different, based on its own particular set of facts.

Where it can be established that teaching staff, or in instances where a duty of care was discharged to non-teaching staff, a volunteer or an external provider as outlined in section 5.3, did not provide a reasonable level of care for students, liability in negligence may arise and the School may be liable for damages sought by the injured party.

8. APPLICATION OF DUTY OF CARE TO CHRYSALIS MONTESSORI SCHOOL OPERATIONS

8.1 Journey to and from place at which School Activity is undertaken

As a general rule, Chrysalis Montessori School does not have a door-to door responsibility for students. However, a duty of care will be owed in any situation where the School assumes responsibility for students, such as where the School provides transport for students to and from school activities, or where the School assumes responsibility for escorting students across a railway line or busy highway.

8.2 Students on school grounds before school

Chrysalis Montessori School provides supervision on school grounds from 8.20am to accommodate the work or other timely commitments of parents/guardians.

The School Commencement Time Procedure is as follows:

- School commences at Chrysalis at 8.45am.
- The school provides supervision in the playground (or in the Cathedral Area if wet) from 8.20am.
- Students are not permitted on the school grounds prior to 8:20 am without parent/guardian supervision
- Parents/guardian of students left alone at school before 8.20am will be notified and will be required to meet with the Principal.

If students frequently arrive at school well before the commencement of classes, the school will contact parents/guardians and advise of the drop off time and that students must not be dropped off unsupervised prior to 8:20 am.

The community will be informed each semester by school newsletter, the school operating hours and that there will be no one to supervise children at school before 8:20 am.

Allowing for the fact that some parents will still ignore these recommendations and deliver students to school earlier than this time, these parents will be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

8.3 Students on school grounds after the close of school

The School Closing Time Procedure is as follows:

- All students at Chrysalis are dismissed at 3:00 pm into the care of their parent/carer, or to a person designated in writing by the parent.
- The school provides supervision in each classroom to 3:15 pm
- Students not picked up by 3:15 pm are taken to the front administration office to be collected or booked into After School Care.
- After dismissal the parent/carer then assumes responsibility for supervising their child(ren) while on the school grounds or while using the playground equipment. Playground closes at 4:00 pm each day.
- Any parent who is noted as not supervising their child(ren) at the end of the day, either on the school premises or in the school's playground, will be notified and will be required to meet with the Principal.

All Children's House and Primary aged students are to be collected by parents from classrooms or via the 'early pick-up' system.

The School offers an After School Care program run by an external provider who assumes duty of care responsibilities for those children assigned to the program by their parent/guardian.

Where the presence of students on school grounds is known or ought to be known, the question to be asked is where it is reasonable in the circumstances to impose responsibility on a staff member for students using the school grounds at the close of the school day. The various scenarios a school may encounter may be summarized as follows: Students who leave school grounds and return later (e.g. in the evenings, weekends) to use the grounds.

There will be no duty of care owed to students who leave the school grounds and return later to use the grounds or playground equipment (unless they return to participate in a school activity).

8.3.1 Students who remain on school grounds after being collected by parents.

As outlined in section 8.3, once a parent/guardian collects their child(ren), they assume responsibility for their child's safety and for supervising them while on the school grounds or while using the playground equipment including the use of the adjoining park on Parkland road.

8.3.2 Students who remain on school grounds whilst waiting for parents to collect them

As outlined in section 8.3, students who have not been collected from class by their parent/guardian by 3.15 pm will be taken to the administration office to wait for collection or placed in After School Care.

However, it is not reasonable to expect staff members to supervise students whose parents are regularly and significantly late in collecting their children. Chrysalis Montessori School may consider reporting concerns to the Department for Community Development and/or delivering students into the care of the police if staff members regularly have to wait for significant time with students whose parents have neglected to collect them.

8.3.3 Students who otherwise remain on school grounds at the close of the school

There should be a teacher on duty for a reasonable amount of time after the close of school to ensure that the majority of students are no longer on the school grounds without parent supervision. The time being 3:15pm when teachers hand over the duty of care to parents/guardians/carers should be widely circulated by way of newsletter. The advice in the newsletter should state that there will be no one to supervise students at school after the 3:15pm and that the school cannot accept responsibility for students remaining on school premises after that time.

Students should be directed to a particular area to enable the supervisor(s) to be able to observe exactly what is occurring. Allowing for the fact that some parents will allow children to stay at school beyond this set time, these parents should be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

8.4 After-school sport on school grounds

A staff member who coaches a sporting team or conducts club activities outside school hours will owe a duty to take reasonable care for the safety of the participating students if the activity is an authorised school activity.

8.5 Students leaving school grounds during school hours

Students are not permitted to leave school premises during the school day in circumstances where there is no parental permission.

The School may release a student where parental permission has been given. The form of the permission should clearly state the terms upon which parents are giving permission for the student to leave premises, including the purpose for which the permission is given, the times during which students may absent themselves (for example daily or on a specified day each week) and the period for which the permission is given (for example a term).

The parent must also provide a written acknowledgement that the school cannot be held responsible for any injury that befalls the student away from the school premises or for any misconduct on the part of the student once the parent has signed child out of school.

Having said this, the Principal must be satisfied that the parent is giving informed permission by advising the parent of any concerns it has for the student's safety. Moreover, if the Principal, having assessed the situation, considers that the student may be placed at risk if allowed to leave the school premises, then permission to leave should be refused notwithstanding that parental permission has been given. For example, if the Principal becomes aware of unsatisfactory behaviour, risk related behaviour or other circumstances likely to affect the health, safety or welfare of a student, it will be justified in withdrawing permission, and will discuss these concerns with the student's parent or guardian.

Provided that the school is satisfied on reasonable grounds that no foreseeable harm will come to a student, the student/teacher relationship will end, and a duty of care will no longer be owed once the student leaves the premises during or for other non-School Activities, such as a doctor's appointment.

9. RELATED LEGISLATION

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

10. RELATED POLICIES

- Child Safety and Wellbeing Policy
- Child Protection Policy
- Mandatory Reporting
- Risk Management Policy
- Risk Management Plan
- Excursion, Incursion & Camp Policy

- Emergency
- Critical Incident Policy
- Behaviour Support Policy
- Staff Code of Conduct

Approved by Mark Panaia Principal

Status	Final
Owner	Principal
Principal Author	Veronica Massang
Reviewed	April 2022
To be reviewed	May 2025

Appendix 1 Confidentiality Declaration

Appendix 2 – Department of Communities, Factsheet 1: What is Child-related Work?

Insert factsheet found at <https://workingwithchildren.wa.gov.au/docs/default-source/default-document-library/factsheet-1-what-is-child-related-work-2015.pdf>