



BUNBURY REGIONAL COMMUNITY COLLEGE

Duty of Care and General Supervision Policy



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Purpose

This policy is intended to:

- a) To fulfil our duty of care towards all students in the College.
- b) To deliver a fulfilling, interesting, and challenging educational program.
- c) To provide appropriate procedures for the application of duty of care in particular circumstances.

The *Teachers' Registration Act 2012* requires that the best interests of children are of paramount importance in the performance of a teacher's role.

The *Guide to the Registration Standards and Other Requirements, January 2022*, under 1. *School Governance* states that the School Education Act requires the Director General to be satisfied that a school is or will be well governed. The governance requirements are that the Governing Body is ultimately accountable for specific matters including the quality of the educational programmes, the school's strategic direction, compliance with applicable laws, and its own duty of care for the students.

All new staff at BRCC receive an induction that will be effective in maintaining both continuity of the learning environment and duty of care for students.

Scope

This policy is applicable to Bunbury Regional Community College. All BRCC employees and volunteers have a duty of care to protect students from risk of harm that can reasonably be foreseen when students are involved in all school activities, whether on or off the College site.

Definitions

CARE School

A Curriculum and Re-engagement in Education school, established and registered solely for the education of students at educational risk.

Child a child is defined in the *Children and Community Services Act 2004 (WA)* as a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age. For the purposes of this policy the words

'child' and 'student' are used interchangeably.

Child of compulsory school age means a child who is required to be enrolled in an educational programme as per section 9(1) of the *School Education Act 1999*.

Duty of Care requires that a school authority has a duty to ensure that reasonable care is taken of its students while they are on the school premises during the hours when the school is open and during school-related off-site activities. This duty is separate from the duty of care owed by each teacher. The duty cannot be discharged simply by appointing competent teaching staff and leaving it to them to take appropriate steps for the care of the students. It is a duty to ensure that reasonable steps are taken for the safety of the students. Neither the duty nor its performance can be delegated. [*Commonwealth v Introvigne (1982) 150 Commonwealth Law Reports 258.*]

Educational Risk

A student is at educational risk if he/she is of compulsory school age but unable to participate in mainstream schooling due to one or more of the following reasons:

- Is disengaged as evidenced by persistent non-attendance or a failure or refusal to enrol.
- Experiences learning difficulties or disadvantages that cannot be effectively catered for by a mainstream school.
- Is affected by life risk factors including domestic violence, abuse, homelessness, transience, addiction, chronic ill-health, or pregnancy.
- Is subject to a Children's Court Order.
- Is the subject of a Responsible Parenting Agreement covering school attendance.
- Is a persistent or serious juvenile offender.

In-loco parentis refers to a relationship in which a person puts himself or herself in the situation of a parent by assuming and discharging the obligations of a parent to a child. The in loco parentis relationship exists when an individual intends to take on the role of a parent to a child who is under 18 or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Parent/carer includes parents, non-parental carers, foster parents, grandparents, and other carers of students.

Responsible person in relation to a student, means a parent/carer of the student; or if the student has turned 18 or who is a prescribed child, the student; or (c) a person whose details have been provided under section 16(1)(b)(ii)(II) of the *School Education Act 1999*.

Policy

Context

Bunbury Regional Community College (BRCC) is a 'Curriculum and Re-engagement in Education' (CARE) School that caters specifically to students who have disengaged from mainstream education. The College offers a full-time alternative education program under the *School Education Act 1999 (WA)*.

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 on the circumstances at the time.

As a 'whole school' approach it is important that:

- BRCC has appropriate policies and procedures in place to address the discharge of its duty of care in the school environment (in and outside of school hours) and at all school activities.
- Although the general duty is to take reasonable steps to protect students from reasonably foreseeable risks of injury, specific (but not exhaustive) requirements of the duty involve providing adequate supervision in the school or on school activities as well as providing safe and suitable buildings, grounds, and equipment.
- Staff have a clear understanding of the meaning of the term 'duty of care.'
- Staff are aware of and have a good understanding of their responsibilities in relation to their duty of care to students.
- A reassessment of students' capacities is undertaken if circumstances surrounding the activity change. This includes any change in the environment or students' medical fitness (e.g., conditions such as asthma, diabetes, epilepsy, fatigue, dehydration) that could affect their capacity to undertake the activity. Alternative activities should be provided for students who are unable to participate in any part of the activity.

Duty of Care Owed by Teaching Staff

A teacher's duty of care responsibility arises automatically from the teacher/student relationship. A teacher must take reasonable care to make sure their acts or omissions do not cause reasonably foreseeable harm and/or injury to their students.

The duty of care owed by teaching staff is one that would be expected from a reasonable teacher with normal skills and attributes exercising their professional judgement.

A reasonable teacher is no longer aligned with 'in-loco parentis' as it is considered that a 'reasonable' teacher has greater knowledge and experience in managing students in a school situation than would a 'typical' parent. The duty owed to students is not an absolute duty to ensure that no harm will ever occur but a duty to take reasonable care to avoid harm being suffered.

Because of their role and training, teachers are expected to have a higher level of accountability and duty of care for students. 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. There may be times when non-teaching staff, volunteers and external providers will also owe a duty of care to students but in no way does this replace or dilute the duty of care owed by the school and teacher.

The Governing Body and College's duty of care is higher than that of a teacher. 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 while the student is in the teacher's care.

A teacher's duty of care also includes being aware of and implementing all of the BRCC 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 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 campus situations.

The legal perspective is that a teacher's duty of care is greater than that of the ordinary citizen in that a teacher is obliged to protect a student from reasonably foreseeable harm or to assist an injured student, while the ordinary citizen does not have a legal obligation to respond.

While each case regarding a teacher's legal duty of care will be judged on the circumstances that occurred at the time, the following common examples may be times when a teacher may be deemed to have failed to meet their legal duty of care responsibilities to their students:

- arriving late to scheduled timetabled yard duty responsibilities
- failing to act appropriately to protect a student who claims to be bullied
- believing that a child is being abused but failing to report the matter appropriately
- leaving students unattended in the classroom
- ignoring dangerous play
- leaving the school without approval
- inadequate supervision on a school excursion

Staff members should also be cautious about giving advice on matters that they are not professionally competent to give. From a legal perspective this could be found to be considered negligent advice. Its I recommended that advice is to be limited to areas within a teacher's own professional competence and given in situations arising from a role (such as careers teacher, year level coordinator or subject teacher) specified for them by the Principal.

As part of their duty of care, teachers must ensure that the advice they give is correct and, where appropriate, in line with the most recent available statements from institutions or employers. Teachers should not give advice in areas outside those related to their role where they may lack expertise. The duty is non-delegable, meaning that it cannot be assigned to another party.

Non-Teaching Staff, Volunteers and External Providers

When non-teaching staff, volunteers and external providers agree to take personal care/charge of students they will owe a duty of care to the

students. They must take reasonable measures to prevent harm coming to the students.

Non-teaching staff and volunteers are not generally personally responsible for students and do not have the same duty of care to students as teachers do. However, in certain situations and under certain conditions teachers may delegate a proportion of their supervisory role to non-teaching staff and volunteers. In this case the non-teacher and/or volunteer will owe the same level of care to students as a teacher. However, the teacher retains the overall duty of care and therefore must remain close by in order to make sure the students are not exposed to unnecessary risk.

In the case of external providers working with the students, while the external provider may have 'charge' of the activity, it is the teacher who retains the duty of care of the students. The teacher should not hesitate to question or query the external provider about an activity or part of an activity where the teacher perceives that there is a risk of harm to one or more of the students involved and that the risk has not been adequately mitigated.

Before the school and/or the teacher delegates some responsibility for student supervision/care to non-teaching staff, volunteers, 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 and/or external providers are suitable for the task being delegated. In the case of external providers, the school should verify, as far as is possible, the external provider's qualification, accreditation, knowledge, skill, and experience in relation to the activity to be conducted.
- That the non-teaching staff, volunteers and/or external providers are familiar with and have a good understanding of the BRCC Code of Conduct.
- 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 and volunteers (e.g., parents) agree to assume this level of care for the students. They have the right to refuse unless it is part of their normal duties.
- That the external provider has a clear understanding of the requirements and expectations of the school, and that the external provider has communicated to the school, all aspects of the activity to be undertaken.
- That the teacher has provided the non-teaching staff, volunteers and/or external providers with clear instructions as to the level of care required.
- That the teacher has provided 'training' and the opportunity for the non-teaching staff to ask questions about the role they are undertaking.

Visitors

The Principal will ensure that there is a procedure to monitor all visitors at BRCC

As a minimum this procedure must require all visitors arriving and departing the school premises during school hours to record their name, their signature, the date and time, and the purpose of the visit.

The procedure is as follows: All persons that arrive at the school must report at the office

and register by signing to record their name, their signature, the date and time, and the purpose of the visit.

Visitors and Casual Relief teachers who are unfamiliar to the premises wait at the office until they are collected by the supervising staff member, or they are accompanied by a Administration staff member to the correct destination. All visitors must sign out.

Supervision Guidelines

The Principal is responsible for ensuring that there is an adequate system of supervision in place during school hours, before and after school, and on school excursions and camps.

The Principal may delegate some duties to the Campus Managers to ensure supervision at each site is in place before and after school and on breaks. The Principal is responsible for ensuring that students are adequately supervised during recess and lunch.

Teachers who are rostered for duty are responsible for remaining in the designated area until the end of the break period, or until replaced a relieving teacher, whichever is applicable. The handing over of duty from one teacher to another must be quite definite and must occur in the area of designated duty. Where a relieving teacher does not arrive for duty, the teacher currently on duty should send a message to the office, but not leave the area until replaced.

Teachers and other school staff are responsible for following reasonable and lawful instructions from the Principal, and as delegated, Campus Managers including instructions to provide supervision to students at specific dates, times, and places.

Classroom Supervision

It is not appropriate to leave students in the care of ancillary staff, parent/carers, or trainee teachers for extended periods of time because at law, the Duty of Care cannot be delegated.

It is not appropriate to leave students in the care of external education providers for example incursions for extended periods of time because at law, the Duty of care cannot be delegated.

Excursions

The Principal must ensure that students participating in excursions and camps are appropriately supervised. Supervision can be provided by teachers, education support officers, trainee teachers, volunteer parents and carers, campsite staff and specialist instructors. Any person who supervises students on an excursion or camp must have a Working with Children check.

The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and a first aid kit.

As the line manager for the teachers and education assistants, Campus Managers must sign off on excursions that are to take place more than 5kms from the school premises. In most cases this is in consultation with the Principal and the Team Leader Senior Social Worker.

Where a social worker is needed, the Team Leader Senior Social Worker **MUST** be consulted.

- Excursions must be uploaded to Consent 2 Go with as much notice as possible.
- Prior to sending information to students/ parents/ carers Admin. must approve the excursion
- All students **MUST** have returned permission slips online or in hard copy before the bus/transport leaves the campus.
- Teachers cannot take students on an excursion outside the Greater Bunbury Region without having a social worker go with them unless approved.
- Teachers must check:
 - they have booked transport prior to the excursion and not on the day of the excursion.
 - they have received the confirmation that they can have the excursion
 - that the staff student ratio is appropriate
 - that the first Aid Kit in the transport is fully stocked and the teachers have a clear written understanding of each child's medical needs (e.g. Anaphylaxis, asthma)

Guidelines for managing physical contact with students/behaviour

Consistent with the information that guides all public schools in WA, any physical contact with students should be a last resort. On rare occasions there can be situations that require physical contact or restraint to ensure a safe school environment.

Understand appropriate physical contact to minimise harm

BRCC staff have a responsibility to minimise harm to students and themselves when using physical contact. This includes:

- taking reasonable steps to protect students from harm that is reasonably foreseeable
- intervening in situations where students may be at risk of harm.

Intervention does not mean staff should put themselves at risk. Appropriate action may be a *verbal direction or call for help*.

The WA Industrial Relations Commission uses these principles to decide if physical contact is reasonable:

- Physical contact is not an appropriate response to bad behaviour unless there is an actual risk of self-harm or harm to others that cannot be dealt with another way.
- Physical contact must not be a disciplinary action.
- Minimal physical contact can be unreasonable if there are practical alternatives.
- Any physical contact must be the least amount necessary to manage the risk.
- Any physical contact must not be excessive in the circumstances or continue beyond a point where it is necessary.

Identify unreasonable physical contact

Examples of unreasonable physical contact include:

- **school and classroom culture**
 - attempting to stop a student from entering or leaving a room (unless there is a concern for the safety of the student, other students, or staff)
 - making physical contact with a student who is attempting to run away (unless they are in danger or likely to cause harm)
- **care and discipline of children**
 - throwing objects at a student to get their attention

- holding a student by the arm, wrist, or back of their neck to gain compliance
- threatening a student with physical punishment if they do not follow a request
- **staff-student relationships**
 - putting your arms around a student
 - kissing a student on the cheek to greet or congratulate them
 - letting a student sit on your lap
 - any repeated and unnecessary physical contact
 - improper conduct of a sexual nature
 - holding or dragging a student by the arm/wrist/body to gain compliance (unless it is part of a student's documented care plan that is approved by their parent)
- **interaction with students with identified needs**
 - using a physical prompt in place of a verbal instruction or less intrusive prompt, for example a gesture
 - using physical contact to gain compliance
 - failing to put in place strategies outlined in a student's care or behaviour plan
 - using physical contact to contain confronting behaviour (unless there is a concern for the safety of the student, other students, or staff).

De-escalate a situation without physical contact

When managing student behaviour verbal direction and conversation is always preferred to physical intervention at BRCC.

To avoid a situation escalating, strategies can include:

- moving attention away from a confrontation
- remaining calm and objective
- repeating clear instructions
- reminding students about their responsibilities
- avoiding the spiral of a power struggle.

If students' behaviour escalates, non-physical intervention can include:

- giving a clear, loud, and assertive verbal instruction to the students directly involved to stop
- giving a warning, for example the possibility of suspension
- directing other students to move away from the situation
- following the school emergency plan
- sending for help from other staff
- calling the police in extreme cases if you exhaust all other options.

Inappropriate physical contact to gain compliance includes:

- pushing
- grabbing
- pulling
- slapping
- punching
- poking.

Note: If physical contact is necessary, you should not intervene if there is a risk of injury. For example, if a situation involves several students or a physically larger student.

Respond to a situation with physical intervention

If there is an incident, for example a student fight, staff must take action that is:

- planned
- proportionate
- necessary.

This may involve reasonable physical contact with a student or their property if:

- you have tried all non-physical interventions
- non-physical interventions are not practical in the circumstances.

As incidents can escalate quickly, you should promptly assess the situation and take appropriate action.

A decision to use any physical intervention must consider:

- the behaviour that is causing the risk
- the physical surroundings
- reasonably foreseeable risks
- the likelihood and severity of harm.

You should also consider the student(s):

- culture
- age
- relative size
- maturity
- personal history
- developmental capacity
- support plan (if relevant).

Physical contact or restraint is a last resort. BRCC staff must not use it to provoke, punish, humiliate, or cause pain to a student.

Note: If there is an incident you must promptly report it to the Principal or Campus Manager. Any use of physical contact must be recorded in writing at the school as an incident and may be used in case of a review.

Use Of Information And Communication Technologies

Teachers and other staff of BRCC also have a responsibility to reasonably supervise the use of information and communication technologies (ICT), and the use of online learning environments at school.

It is not reasonable or practicable for a teacher or Principal to inspect every website that will be accessed by a student. The nature of the Internet means that there can be no guarantee against inappropriate content or changing circumstances in website content.

It is not reasonable or practicable for a teacher or Principal to supervise an online learning environment 24 hours a day.

The Principal and teachers are expected to respond to an online incident that impacts on students at the school as soon as they have knowledge of its occurrence

Regular contractors on the school site

In many schools there will be people working on the school site, within and outside of school student contact hours who, because they are not directly employed as staff by the school and whose work is not considered to be 'child related,' do not require and would, in fact, be considered ineligible for a Working with Children Check (WWCC). This may include

cleaners, who may be on the school site when some students are still present.

BRCC will ensure it completes adequate checks with the contractor's employer as to their suitability to be working within proximity of students. Such verification could include an assurance of a satisfactory National Police Check (NPC).

Working with Children (Criminal Record Checking) Act 2004

The Working with Children (Criminal Record Checking) Act 2004 aims to help 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.

BRCC has an obligation to make sure that their employees and volunteers who need the Working with Children Check (WWC Check) have one. BRCC staff are required to ensure their WWC Check is current, and a copy is provided to the College and loaded onto Employment Hero. As the WWC Check is only one way of promoting a safer environment for children, BRCC also ensures a rigorous recruitment and selection practice is used for employing new staff, including thorough referee checks.

BRCC policies and procedures that promote safe and supportive environments for children, which are implemented across the College including a sound complaints and concerns process where concerns can be safely raised. BRCC works to ensure that children's concerns are heard and are respected.

BRCC has a good risk management policy, a Code of Conduct staff must adhere to, and regular supervision and training to assist staff meet their duty of care to students.

Applicable Legislation

Civil Liability Act 2002

Occupational Safety and Health Act 1984

Occupiers Liability Act 1985

School Education Act 1999

Teachers' Registration Act 2012

Volunteers and Food and Other Donors (Protection from Liability) Act 2002

Workers' Compensation and Injury Management Act 1981

Working with Children (Criminal Record Checking) Act 2004

Policy Review Date

This policy is due for review annually.

Contact BRCC

Web <http://www.brcc.org.au/contact/>

Email admin@brcc.org.au

Phone 6724 6971

Bunbury Campus: Level 1/16 Victoria Street, Bunbury

Busselton Campus: 50 Albert St, Busselton WA 6280

| Approval Process | New Policy or Amendment | Minor Amendment or Review |
|--|--------------------------------|----------------------------------|
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