



## Duty of Care

### Legal Background

- 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 the negligence of another, they should be compensated for the loss and damage which arises from the negligent act or omission.
- In order to successfully bring a claim in negligence for compensation for an injury, a person must establish, on the balance of probabilities, that:
  - a duty of care was owed to the person harmed at the time of the injury
  - the risk of injury was 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 was a cause of the injury.
- The fact that a duty of care exists does not of itself mean that a school will be liable for an injury sustained by a student. In order for the student to succeed in a negligence claim, all of these elements must be established.

### Background

- In addition to their professional obligations, Principals and teachers have a legal duty to take reasonable steps to protect students in their charge from risks of injury that are reasonably foreseeable.
- The nature and extent of the duty of care will vary according to the circumstances. For example the standard of care required when supervising students on an excursion will be higher than when teaching these students in the classroom.
- Principals and teachers are held to a high standard of care in relation to students. The duty requires Principals and teachers to take all reasonable steps to reduce risk, including provision of suitable and safe premises, provision of an adequate system of supervision, implementation of strategies to prevent bullying and ensuring that medical assistance is provided to a sick or injured student.
- The duty is *non-delegable*, meaning that it cannot be assigned to another party.
- The important issue in all cases will be what precautions the school could reasonably be expected to have taken to prevent the injury from occurring. This will involve consideration of 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 and the social utility of the activity that creates the risk of harm.
- A number of cases have established that, in some circumstances, a school’s duty (and therefore the DET’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*.

### Purpose

- To ensure Werribee Primary School complies with legislation and DET policy and guidelines.

### Implementation

- The Principal will ensure that staff members have an understanding of their duty of care to students as it applies to classroom supervision, movement of students, yard supervision, camps and excursions, first aid and student health care needs and medication.
- Staff Handbook will be provided to staff at the beginning of the year outlining their responsibilities
- Whilst 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 has 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
  - being late to supervise the line up of students after the bell has sounded
  - leaving students unattended in the classroom
  - failing to instruct a student who is not wearing a hat to play in the shade
  - ignoring dangerous play



- leaving the school during time release without approval
  - inadequate supervision on a school excursion
- In providing advice to students, teachers should limit their advice to areas within their professional knowledge and ensure such advice is correct and in line with the most recent available statements.
- Given that the duty of care may extend beyond school hours, the school will be alert to situations in which immediate and positive steps may be required. If for example, a live power line came down outside the school, no emergency workers had arrived, and primary children were about to be dismissed to walk home, the school would not allow the children to walk out to that danger unsupervised.
- Informing staff of the legislative liability of Duty of Care
- All staff members will be informed of their legal requirement via:
  - A copy of this document will be provided to each member of staff at the first staff meeting at the commencement of the school year, and will be placed on the intranet.
  - New staff members will be informed of their Duty of Care as part of the school's Induction Program.
  - Staff will complete a risk assessment including duty of care when completing planning for camps and excursions.
- Please refer also to the school's *Mandatory Reporting Policy, Camps and Excursions Policy, Yard Duty/ Supervision Policy, Anaphylaxis Management Policy, Asthma Management Policy, First Aid Policy, Sun & UV Protection Policy, Bullying and Harassment Policy, Volunteer Workers Policy, Visitors Policy, Emergency Management Plan* and the *Critical Incident Management Plan*.

### **Evaluation**

This policy will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update early September 2014).

**This policy was ratified by School Council on 18 October 2016**

Next review Due: August 2019

Reference:

<http://www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare.aspx>