



# **POLICY 8**

## *Duty of Care*

### **PURPOSE:**

- To explain the nature of the legal duties owed by teachers towards students and to ensure that teachers act in manner consistent with these obligations.

### **IMPLEMENTATION:**

- The Principal and teachers must be aware of the legal duties detailed in the attached Appendix and the steps that they must take to discharge their responsibilities.
- The Principal and teachers must take such measures as are reasonable in the circumstances to protect a student under their charge from risks of injury that they should reasonably have foreseen.
- The Principal and teachers must take all reasonable steps to reduce risk, including through the:
  - provision of suitable and safe 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.
- 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 Principal
  - ensure that the advice they give is correct and in line with the most recent available statements.
  - avoid giving advice in areas unrelated to their role or where they may lack expertise.
- All staff will be informed of their legal duties by:
  - induction training for new staff
  - a copy of the policy being provided at the first staff meeting of every year for discussion

### **RELATED POLICIES/REFERENCES:**

- On-site Supervision of Students Policy
- Camps and Excursions Policy
- Visitors Policy
- School Policy Advisory Guide, Victorian Department of Education and Training

### **EVALUATION:**

This policy will be reviewed;

- after a serious incident occurs at school,
- or as part of the school's three year review cycle.

**This policy was ratified by School Council on 15/06/2017**

**APPENDIX:** Appendix A: Legal Background - Duty of Care

# Appendix A

## Legal Background - 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 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.

### Standard of care required

- 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.
- The duty is non-delegable, meaning that it cannot be assigned to another party.
- Whenever a teacher-student relationship exists, teachers have a special duty of care. This has been expressed as: “a teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher’s charge from risks of injury that the teacher should reasonably have foreseen.” (*Richards v State of Victoria*).
- The nature and extent of the duty will vary according to the circumstances. For example, the standard of care required will be higher when taking a group of preps for swimming lessons than when teaching a group of grade 6s in the classroom.
- The important issue 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 following factors:
  - 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 social utility of the activity that creates the risk of harm

### Duty of care to students outside the school

- A number of cases have 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.
  - In 1977 the High Court found a school authority liable for an injury sustained by a student in the playground 15 minutes before school began for the day (*Geyer v Downs*). In that case the principal was aware that children were coming onto the grounds before school, and had instructed that children who did so were to read or talk quietly. The Court took the view that in so doing, the principal had brought the school-student relationship into existence and therefore created a duty to ensure that there was adequate supervision before school.

- In 1996, a non-government school in NSW (*Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman*) was found liable for an injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. In that case, the school was aware that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. Moreover, 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 school authority had a duty of care.
- In 2001, a school in NSW (*re Graham v NSW*) was found not liable for injuries to a student with a disability who was hit by a motor vehicle when crossing a busy road a kilometre from school, when walking to school by herself. The allegation against the school was that it should have provided a bus, but the New South Wales Court of Appeal held that the school had discharged its duty by informing the parent at the start of the year that the bus service was no longer being provided, and that the parent should make appropriate arrangements.
- 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.
- It is important that schools clearly inform parents when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours. Similarly, some risks outside of school will involve informing parents of bus arrangements and leaving it to parents to make appropriate arrangements for transporting their children to and from school.
- There will be other situations in which schools will be under a duty to take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to students is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.
- While each case 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 or ignoring dangerous play
  - failing to instruct a student who is not wearing a hat to play in the shade
  - leaving the school during 'non-face to face teaching time' without approval
  - inadequate supervision on a school excursion