



DUTY OF CARE POLICY

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.

Rationale

- 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, including the school complies with the seven Child Safe Standards
- 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 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.
- 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 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.
- 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*.
- Based on case law, whether the duty extends outside of school grounds 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.
- 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.
- Additionally schools enrolling international students under the age of 18 (who are not being cared for by a parent or suitable relative) are expected to have a comprehensive home stay policy and procedures in place to assess and monitor the suitability of accommodation arrangements. See School Resource Kit and Quality Standards under [Department resources](#) at the website below.

Purpose

- To explain the nature of the legal duties owed by teachers and school staff towards students.
- To ensure Mackellar Primary School complies with legislation and DET policy and guidelines.
- To ensure the school has in place strategies to enhance compliance with the Child Safe Standards 1, 2 and 6

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.
- 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 if applicable
 - 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 students to areas within their own professional competence and given in situations arising from a role specified for them by the Principal. Teachers should ensure that the advice they give is correct and in line with the most recent available statements from institutions or employers and avoid giving advice in areas unrelated to their role or where they may lack expertise.
- Teachers may wish to keep contemporaneous notes of advice given to individuals.
- 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 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.
- The school will regularly inform parents through the newsletter when playground supervision will be provided and that no supervision of the playground occurs outside these hours.

Evaluation

- This policy will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update late June 2017).

This policy was ratified by School Council on June 2016

Reference:

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