



# Catholic College Sale

## DUTY OF CARE

### **PREAMBLE:**

The purpose of this policy is to explain the legal duties owed by teachers and school staff towards students.

“Duty of care” is an element of the laws concerning negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

To successfully bring a compensation claim in negligence a person must establish, on the balance of probabilities, that:

- a duty of care was owed to them at the time of the injury
- the risk of injury was reasonably 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; and
- this breach or failure caused or contributed to the injury, loss or damage suffered.

The fact that a duty of care exists does not 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.

From 1 July 2017, an additional duty of care exists for any organisation in Victoria that exercises care, supervision or authority over children, including schools. This duty of care will establish a presumption of liability, such that these organisations will need to prove that they took “reasonable precautions” to prevent child abuse, if they are to successfully defend a legal claim. The new duty does not change existing duties that schools and teachers already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

### **POLICY:**

In addition to their professional obligations, principals, teachers and other employees have a legal duty to take reasonable steps to protect students in their charge from risks of injury that are reasonably foreseeable.

Duties of care may also be owed by a school (and its employees) to persons who are not students where it is reasonably foreseeable that a person will sustain injury, loss or damage by reason of the school’s conduct.

The Principal, with assistance from members of the Leadership Team, is responsible to assist the staff to be aware of their professional responsibilities, including those arising from their duty of care.

All members of staff are required to take the necessary steps to be aware of and fulfil their obligations for the care of students, and others.

## **POLICY IMPLEMENTATION GUIDELINES:**

### ***Standard of care required by schools***

Principals and teachers are held to a high standard of care in relation to students. The duty requires principals and teachers to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- ensuring the school complies with the seven Child Safe Standards
- 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

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. Generally, teachers are expected to take such measure as are reasonable in the circumstances to protect a student under their charge from reasonably foreseeable risks of injury.

The nature and extent of this duty will vary according to the circumstances. For example, the standard of care required will be higher when taking a group of Year 7s for swimming lessons than when teaching a group of Year 12s 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:

- identifying the risk of harm
- 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***

The law has 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 required it in the particular circumstances. For example, in some circumstances schools may be liable for injury sustained by students in the yard before school begins for the day, particularly if it occurs during the period of time for which the school yard is supervised.

In one case, a school was found liable for injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. The school knew that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. In addition, 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.

Whether the duty extends outside of school grounds therefore depends on all 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 to avoid injury. 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.

### ***Examples***

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
- being late to supervise the arrival of students to class after the bell has sounded
- leaving students unattended in the classroom
- ignoring dangerous play
- inadequate supervision on a school excursion
- believing that a child is being abused but failing to report the matter appropriately

### ***Negligent advice***

Teachers are frequently called upon to advise students. When doing so teachers (and all other staff) should:

- limit their advice to students 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 from institutions or employers. Careers teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals
- avoid giving advice in areas unrelated to their role or where they may lack expertise.

### ***Restraint of Students***

- With regard to the restraint of students, the school will comply with Regulation 15 of the Education and Training Reform Regulations 2007 which states: "A member of the staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour dangerous to the member of staff, the student or any other person."
- The regulation authorises 'reasonable' action which is 'immediately' required to 'restrain' a student. In less serious cases, the reasonable action would involve a warning or instruction to the student not to proceed. In more serious cases where a person faces an imminent threat of injury due to the student, the reasonable action could involve the physical restraint of the student.
- The object of the restraint is to avert the danger to come person. It should therefore be measured (i.e. reasonable in the circumstances) and removed once the danger has passed.

### ***Other Specific Expectations***

- If a student needs to go to the Sick Bay, another student is to be sent with him/her to ensure they get to Sick Bay. The accompanying student is then to return to class. The First Aid Officer will then make a note on SIMON that the student is now being cared for in Sick Bay and is, therefore, no longer subject to the teacher's Duty of Care.
- Teachers may give students permission to leave class, eg to go to the toilet or library, for a brief time. If the student doesn't return within a reasonable time, the teacher is to contact Reception.
- Staff members may not be under the influence of alcohol (or illegal drugs) while responsible for the supervision of students. This includes the evenings on camps or retreats after students have retired. Suck intoxication may lead to allegations of negligence and/or ineligibility for Work Cover claims.