



Sebastopol Primary School

P.O. Box 246
Warreen Street
Sebastopol 3356

Duty of Care

PURPOSE

To explain the legal duties owed by teachers and school staff towards students.

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 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 will exist 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.

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 measures 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 preps for swimming lessons than when teaching a group of year 12s in the classroom.



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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

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 homestay policy and procedures in place to assess and monitor the suitability of accommodation arrangements. See *International Student Program (ISP) Quality Standards and School Resources* under *Department Resources*.

DUTY OF CARE TO STUDENTS OUTSIDE THE SCHOOL

The law has established that, in some circumstances, a school's duty (and therefore the Department'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*. For example, in some circumstances schools may be liable for injury sustained by students in the playground 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 non-government 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 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 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.

NEGLIGENT ADVICE: TEACHERS

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



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- 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

RELATED POLICIES

- Child Safe Standards
- Personal Liability of School Employees
- SERS Insurance Claims and Settlement Process
- Volunteer Workers
- Risk Management

DEPARTMENT RESOURCES

- www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare.aspx
- *The PROTECT Portal*: provides further information on how schools can meet their obligations under the Child Safe Standards
- *ISP Quality Standards and School Resources*: see *International Student Program Quality Standards for Schools, Quality Standard 5 - Younger Students*

This document was last ratified by School Council in <MONTH> <YEAR>.