



### Rationale

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

### Policy statement

Teachers and other staff members of Oberon Primary School have a duty of care to the school's students. Staff will take all reasonable measures to protect a student, under their charge, from risks of injury that are reasonably foreseeable.

### 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.

### Implementation

Principals, teachers and other staff are held to a high standard of care in relation to students. The duty requires principals, teachers other staff 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
- 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.

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.

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 ISP Quality Standards and School Resources under **Department Resources**.

### **Duty of care to students outside the school**

A number of cases have 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.

### **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
- 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**

- OPS Child Safe Policy
- OPS Information Privacy
- OPS Mandatory Reporting Policy

### **Supporting Documentation**

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

### **Evaluation**

This policy will be reviewed as part of the school's three-year review cycle.

**This policy was ratified by the School Council on: 18/06/2019**

**NEXT REVIEW DATE: June, 2022**

Policy prepared by Genefor Walker-Smith — October 2016