

DUTY OF CARE FOR STUDENTS

Policy and Guidelines

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By: Deputy Principal

The school and its teachers owe a common law duty of care to take reasonable steps to protect students from any injury that may be reasonably foreseen. This requires teachers not just to react to situations as they arise, but to engage in appropriate risk management to reduce the risk of injury.

Duty of Care is a legal concept that has its origins in the common law principle of negligence. Student duty of care not only underpins but, to a large extent drives, many of St Mary's Anglican Girls' School's policies and practices.

POLICY

It is the Policy of St Mary's Anglican Girls' School that:

- teaching staff owe a duty to take reasonable care for the safety and welfare of students while students are involved in school activities or are present for the purposes of a school activity. The duty is to take such measures as are reasonable in all those circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken;
- in discharging their duty of care responsibilities, teaching staff must exercise their professional judgement to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students' independence and maximising their learning opportunities; and
- when non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

GUIDELINES

These guidelines attempt to explain:

- what "duty of care" owed to students means;
- the impact of civil liability laws;
- how teaching staff may discharge their duty of care to students; and
- the circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

DUTY OF CARE OWED TO STUDENTS

St Mary's Anglican Girls' School and its teachers owe a duty to take care of students while they are involved in school activities or are present for the purposes of a school activity. This duty of care is non-delegable.

The duty is to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

The standard of care required is that of a 'reasonable' teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes exercising their professional judgement. The duty owed to students is not an absolute duty to ensure that no harm will ever occur, but a duty to take reasonable care to avoid harm being suffered.

Individual circumstances will determine what constitutes reasonable care. The following issues may be considered in assessing the reasonableness of the level of care in any particular circumstance:

- the student's age, experience and capabilities – younger students require more care than mature students;
- physical and intellectual impairment – students with disabilities are exposed to higher levels of risk of injury than students without a disability;
- medical condition – special care must be taken to protect students with known, or ought to be known, medical conditions which expose them to a higher risk of injury (eg asthma or epilepsy);
- behavioural characteristics – the level of care is increased where students are known to behave in a manner that increases the risk of injury;
- the nature of hazards present – increased care is required if the school activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment;
- any conflicting responsibilities the school or teacher may have; and
- normal practices and procedures within the school.

These factors should be taken into account when planning student activities.

CIVIL LIABILITY LAWS

The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.

These laws limit liability in certain circumstances including, in broad terms:

- the school does not owe a duty of care to warn of an "obvious risk"; and
- the school will not be liable for harm suffered as a result of the materialisation of an "inherent risk".

The existence of civil liability laws means that issues of liability for student care claims in Australia will ultimately be determined by a complex mixture of legislation and common law (judge's decisions).

DISCHARGING OUR DUTY OF CARE

In discharging duty of care responsibilities, the School and teaching staff must exercise professional judgement to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students' independence and maximising learning opportunities.

When assessing the risk involved in a school activity, consideration is given to the following factors:

- **The probability of the risk occurring**

What is the likelihood of harm being suffered in the circumstances? Is it reasonably probable or so improbable as to be scarcely worth taking into account?

- **The magnitude of the risk**

How serious may the consequences be if the risk is run and harm results? Are the potential consequences too great to justify running the risk?

- **The expense, difficulty and inconvenience involved in alleviating the risk**

What is to be gained by running the risk in order to undertake the school activity? What is to be lost if it is not undertaken? What alternatives are reasonably available, and with what risks or other disadvantages are they attended? How easy is it to take precautions against the risk? The easier it is to take precautions, the greater the obligation to take those precautions.

Against each identified student safety hazard, it is the school's policy to develop risk controls and/or treatment plans. Risk controls often take the form of documented policies that are made available to all school staff through the school intranet.

NON-TEACHING STAFF, VOLUNTEERS AND EXTERNAL PROVIDERS

Non-teaching staff, volunteers and external providers do not have the same special duty of care relationship with students as teaching staff do, and unless requested and they agree to do so, are not responsible for personally caring for the students.

When non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

When deciding whether a member of the non-teaching staff, an external provider or a volunteer might personally care for students (without a member of the teaching staff also being present), teaching staff must satisfy themselves that the person is suitable for the task being assigned

EXAMPLES

- A teacher who supervises a group of students from a number of different schools during an interschool sports carnival will owe a duty of care to all of the students under his or her control, to take such measures as are reasonable in all the circumstances to protect them from risks of harm that reasonably ought to be foreseen.
- A Year 12 Coordinator is satisfied, having taken into consideration factors mentioned above, that the Aboriginal Education Officer (AIEO) is a suitably qualified and experienced person to accompany three Year 12 Aboriginal students to an open day for prospective Aboriginal students at the University of Western Australia. The Year 12 Coordinator has complied with the requirements of the Excursions Policy, has briefed the AIEO about the level of care required for the three students and has agreed to be contactable via mobile telephone should the AIEO experience any problems while caring for the students. The AIEO feels comfortable to accept the responsibility for caring for the three students in these circumstances.
- A Year 4 teacher is satisfied, having taken into consideration factors such as those mentioned above, that a parent volunteer is a suitably qualified and experienced person to supervise her class while she leaves the classroom for a few minutes. The teacher has briefed the parent volunteer about the method of supervision and has instructed her to request assistance from the teacher in the adjoining classroom in the event of an emergency. The parent volunteer feels comfortable to accept the responsibility for supervising the class for a short period in these circumstances.
- A LOTE teacher is satisfied, having taken into consideration factors such as those mentioned above, that a teacher from another school is a suitably qualified and experienced person to accompany a group of language students from various schools on a cultural excursion to France. The LOTE teacher has briefed the accompanying teacher about the level of care required for his students. The LOTE teacher has also made enquiries to satisfy himself that the French families, with whom his students will be billeted, are fit and proper persons.