



Nunawading Christian College Primary

Duty of Care Policy

Document Control

Revision Number	Implementation Date	Review Date	Description of Changes	Prepared By	Approved By
	March 2017	2020		NCCP Amin	School Council

Preamble

Nunawading Christian College Primary (NCCP) as part of the Adventist Schools Vic school system endeavours to maintain highest levels of “Duty of Care” to all students.

Purpose

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

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.

Standard of care

The Principal, teachers and support staff of Nunawading Christian College Primary will maintain a high standard of care in relation to students. The duty requires principals, teachers and support 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.

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 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.

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.

Duty of care to students outside the school

A number of cases have established that, in some circumstances, a school’s duty (and therefore Nunawading Christian College Primary 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*.

- In 1977 the High Court found a school authority **liable** for an injury sustained by a student in the playground 15 minutes before school began for the day (*Geyer v Downs*). In that case the principal was aware that children were coming onto the grounds before school, and had instructed that children who did so were to read or talk quietly. The Court took the view that in so doing, the principal had brought the school-student relationship into existence and therefore created a duty to ensure that there was adequate supervision before school.

- In 1996, a non government school in NSW (*Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman*) was **found liable** for an injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. In that case, the school was aware that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. Moreover, 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.
- In 2001, a school in NSW (*re Graham v NSW*) was **found not liable** for injuries to a student with a disability who was hit by a motor vehicle when crossing a busy road a kilometre from school, when walking to school by herself. The allegation against the school was that it should have provided a bus, but the New South Wales Court of Appeal held that the school had discharged its duty by informing the parent at the start of the year that the bus service was no longer being provided, and that the parent should make appropriate arrangements.

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 (as in Graham's case) 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. 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.

Implementation

- Although the general duty is to take reasonable steps to protect students from reasonably foreseeable risks of injury, specific [but not exhaustive] requirements of the duty involve providing adequate supervision in the school or on school activities as well as providing safe and suitable buildings, grounds and equipment.
- Duty of care is not confined to the geographic areas of the school, or to school activities, or to activities occurring outside the school where a student is acting on a teacher's instructions. The duty also applies to situations both before and after school where a teacher can be deemed to have 'assumed' the teacher/pupil relationship.
- The teacher's duty of care is greater than that of the ordinary citizen in that a teacher is obliged to protect a student from reasonably foreseeable harm or to assist an injured student, while the ordinary citizen does not have a legal obligation to respond.
- 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 class/ 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 (see Also Child Safe Protection Policy)
- Being late to supervise the line-up of students after the bell has sounded
- Leaving students unattended in the classroom
- Failing to instruct a student on the school sun safe policy
- Ignoring dangerous play
- Leaving the school during time release without approval
- Inadequate supervision on a school excursion.
- Staff members are also cautioned against giving advice on matters that they are not professionally competent to give [negligent advice]. Advice is to be limited to areas within a teacher's own professional competence and given in situations arising from a role [such as careers teacher, year level coordinator or subject teacher] specified for them by the Principal.
- Teachers must ensure that the advice they give is correct and, where appropriate, in line with the most recent available statements from institutions or employers. Teachers should not give advice in areas outside those related to their role where they may lack expertise.

Risks to students outside the school environment

A teacher's duty of care does not start nor end at precise times during the day. The approach taken at NCCP is that a teacher's duty applies irrespective of whether the risk occurs in or outside the school environment. However, the important issue in all cases is whether the school took **reasonable steps** to protect the student from the risk.

Risks outside the school environment may sometimes call for immediate and positive steps by the school depending on the age of students, urgency and threat of injury. Such matters will be considered on a case by case basis.

The following instructions and notices **apply to all staff**.

Classroom supervision

- It is **NOT** appropriate to leave students in the care of ancillary staff, parents or trainee teachers [at law, the duty of care cannot be delegated]
- It is **NOT** appropriate to leave students in the care of external education providers for example incursions [at law, The duty of care cannot be delegated]
- In **an emergency situation** use the phone to call the Principal or contact the teacher in the next room. [if appropriate – send another student for assistance]
- **No student** should be left unsupervised **outside the classroom** as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted by sending a student to a colleague's classroom, or to the Principal. This should be accompanied by documentation and appropriate follow up. The teacher, Principal **is to be contacted first** to alert them that the student is on their way.

Movement of Children

- Care needs to be taken in allowing students to leave the room to work in other areas of the school
- Discretion is to be used when allowing students to visit the toilets during class time

Yard supervision

- Yard supervision is an essential element in teachers' duty of care. It is now clearly established that in supervising pupils, teachers' duty care of is one of positive action
- Be aware that children are usually less constrained and more prone to accident and injury than in a more closely supervised classroom
- Be aware that yard duty supervision within the school brings with it an increased duty of care. It is a teacher's responsibility to be aware of these guidelines and duty of care responsibilities.
- Teachers rostered for duty are to attend the designated area at the time indicated on the roster
- Teachers on duty are to remain in the designated area until the end of the break period or until replaced by the relieving teacher, whichever is applicable
- The handing over of duty from one teacher to another must be quite definite and **must occur in the area of designated duty**. Where a relieving teacher does not arrive for duty, the teacher currently on duty should send a message to the office, **but not leave the area until replaced**
- No changes to the yard duty roster are to be made without the approval of the Daily Organiser or Principal
- Be alert and vigilant – intervene **immediately** if potentially dangerous behaviour is observed in the yard – enforce behaviour standards and logical consequences for breaches of safety rules
- You should always be on the move and highly visible (wearing the High Visibility vest)

Before and After School Care

- Students must be adequately supervised at all times, which includes a minimum of 30 minutes before school and 30 min after school, after which students are sent to the office for further supervision if required. The office will contact the parent and if necessary may direct the student/s to after Outside School Hours Care (OSHC).

Excursions, Incursions and Camps

- Be aware that children are usually less constrained and more prone to accident and injury than in a more closely supervised classroom
- Be aware that an incursion with an external provider does not absolve supervision duties of the teacher, including first aid duties. A teacher must be present at all times and remain the person designated with duty of care responsibilities
- Be aware that camps and excursions outside the school require the teacher to remain the person designated with duty of care
- Be aware that excursion and camp activities require the teacher to ensure that the venue and transport adhere to school guidelines
- Be aware that school policy is for students to be counted on and off transport and at other times on a regular basis whilst on excursion or camp activities
- The teacher in charge will have copies of all confidential medical forms and permission notes with contact details. A copy of this material will; also be kept at school

- The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and a first aid kit
- If the return time from an excursion or camp is delayed, the teacher in charge will contact the school to inform the Principal of the new arrival time so that parents can be contacted and a senior staff member will remain at school until they arrive
- If crossing roads, students are to use designated crossing points. Staff are to walk to the middle of the crossing to ensure visibility and orderly crossing. Other staff control the flow of students across the road
- All staff MUST follow the school guidelines when organising an excursion, incursion or camp.

Ensuring a Safe Workplace for all People

- It is the responsibility of each employee to ensure the school premises are safe at all times.
- Regular checks of each employee's own work space are required as outlined in the WH&S policies to minimise risk of injury to any persons on the school premises.
- If a risk is identified by an employee in an area outside this immediate workspace, it is the responsibility of the employee to ensure no person is put in an immediate risk of harm and then immediately notify the school administration of the issue (as per the WH&S policies).

EVALUATION

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

Sourced:

<http://www.myschoolsapp.com.au/documents/18/101/HSDS%20Duty%20of%20Care%20Policy%20May%202016.pdf>

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

Implementation:

Policy adopted and implemented by NCCP Administration February 2017.