

Duty of Care

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Teachers, students and teachers all owe a 'duty of care' to students within their care by virtue of the special nature of the relationship between the school/teacher/principal and the student. 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 concept of duty of care is far-reaching and more often than not a court will find that the circumstances lead to the creation of a duty of care. The person who owes duty of care will be in breach of the duty and negligent when that person fails to act in accordance with the required standard of care.

The standard of care expected is the standard of care which would be exercised by a reasonable person in the same circumstances.

The Teacher

The teacher owes a duty of care to the student.

Historically, the courts had decided that the term duty of care, as applied to teachers, was similar to the duty of care that a parent owed a child. In practice, the standard of care required of a teacher is higher than that which the courts require of a parent.

In court cases that have dealt with questions concerning duty of care, it has been described as the responsibility that a reasonable teacher exercises for the safety and well being of the student. The High Court of Australia has established that the duty of care owed by a teacher to a student is that type of care that a reasonable teacher can take. A reasonable teacher is one who has normal or usual skills and attributes. The court makes no exception for lack of experience on the part of a teacher. In *Richards v State of Victoria* (1969), the judge held that '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' (VR 136 at page 141).

The duty of care requires that the teacher acts always in a reasonable way for the safety and welfare of the student. Teachers must always consider the safety of students in their care and protect them from both known hazards and from hazards that could reasonably be foreseen. The duty is a considerable one but it is not absolute, that is to say, a teacher may not be able to stop all accidents from happening. Thoughtful and thorough preparation, knowledge and understanding of accepted standards of safety, awareness of risks, and vigilance will lessen the possibility of an incident or accident occurring.

Teachers may owe a duty of care to third parties in relation to the acts of pupils within the scope of their supervision: *Haines v Rytmeister* (1986) 6 NSWLR 529 (not subsequently considered). This is a duty to ensure that students under their supervision do not injure others. Teachers should always be vigilant in their supervision of students in their care and must have regard to the potential impact of students' behaviour on other students, staff and members of the public.

The Principal

The principal has a duty of care through overall responsibility for all the activities associated with the school. The principal practises a directional and supervisory role over all the staff and those who are contracted to work on behalf of the school. It is usual practice for principals to allocate responsibilities to specific staff members. The principal is responsible to ensure that the responsibilities of appropriate staff members are fulfilled in a professional manner.

The School

The school owes a duty of care towards the safety of its staff, as well as any visitors (including parents and contractors) to the school grounds. The school needs to take all possible care that the property is a safe place for all that use the facility. The *Wrongs Act 1958* (Vic.) states that an occupier owes a duty to take reasonable care to see that any person on the premises will not be injured or damaged due to the state of the premises or anything done or omitted to be done on the premises.

An occupier is usually understood to be the person who has the right to permit or deny entry to the premises.

In the case of a Catholic school, the occupier may be the parish priest, the principal or the designated authority within a religious, order-owned school.

It is the responsibility of the occupier to make sure the premises are safe and that any person on the premises will not be injured or damaged because of the state of the premises.

This duty of care extends to all who use the premises, even during out-of-school hours. Management must ensure that buildings, equipment and facilities are all safe and sound.

School policies and regulations/rules (guidelines) are developed and promulgated in order to assist teachers in carrying out this duty of care. These policies and regulations need to be in harmony with the *Education Act 1958* (Vic.), Catholic Education Commission of Victoria policies, directives issued by the diocesan

Directors of Catholic Education Offices in Victoria, and be in accordance with the legal requirements of the State and Commonwealth.

Personal Liability of Teachers

A teacher has a duty of care to students at all times while working on behalf of the school (during school hours or out-of-school hours). If the teacher fails in fulfilling this duty of care, or if the standard of care exercised is found to be less than that which a reasonable teacher would have exercised in the circumstances, then the teacher may be found to be negligent by a court of law and therefore liable for injuries caused. In these circumstances, a teacher is advised to obtain independent legal advice and/or to consult with his/her trade union representative. The teacher's employer may also be vicariously liable for the negligence of the teacher if the teacher's negligence arises in the scope of his/her employment.

Legal proceedings concerning personal injuries of students, if alleged to be caused through the negligence of the school or one of its teachers (or an employee other than a teacher), are normally brought against the responsible school authority (the school board of an incorporated school, principal, the parish priest or responsible authority) and probably the teacher as well. The school is sued because it has overall responsibility for the safety of its students. The claim may be for damages as a result of negligence. The teacher may be named as a defendant along with the school authority.

Employees should be advised to never make any admission of liability, never agree to an offer, nor make a promise or payment to another party in connection with such a claim. Any party making a claim about such matters should be referred to the principal. A teacher would normally not be liable where he/she practised reasonable and adequate supervision, where dangers were understood and anticipated, and where all reasonable precautions were taken. It should be the normal practice of every teacher to always follow legal safety instructions.

Negligence can be described as an act or omission which represents a breach of the duty of care leading to some harm of the person for whom the duty of care is owed. It can occur where there has been unreasonable risk of harm, where a teacher has failed to follow safety instructions or has acted in an irresponsible or unprofessional manner. Then the teacher may be personally liable for injury or damage to property. The employer may be vicariously liable for the negligence of its employees where such negligence occurs during employment.

Schools usually have public liability insurance. The school's insurer should be contacted immediately following an accident so that arrangements can be made as to what action the school needs to take in the circumstances.

Remember, for negligence to be proven, a connection needs to be established between the duty of care, the care provided and the harm or damage caused. It may be some years before the case is heard by a court.

Negligent Advice

School staff should limit advice to students to their areas of expertise and competency. The advice needs to be accurate and correct. Staff members should make written notes about the advice offered and to whom it is directed.

If a claim is made against a staff member for negligent advice, then he/she should consult with the principal as to the action the school will take, along with seeking personal, independent legal advice.

References

The principal will often be requested to write a reference for a student. With the consent of the student, the principal may respond factually to letters or telephone requests for comment on the capacity of the particular student to perform particular tasks, or for a confidential reference to a potential employer. It can be presumed that where a student has made a request for a reference, then that student consents to the provision of a reference by the principal. Copies of letters and adequate records of telephone conversations concerning these matters should be retained in the student's file.

Individual staff members may be asked to supply a personal reference for a student. The reference should state factual matters in a fair and reasonable way. Always retain a copy of any reference provided.

Never provide a reference that is false, misleading or inaccurate. Someone will be relying on the reference to assess the character or capabilities of the student.

Principals and staff are reminded that under amendments to the *Privacy Act 1988* (Cwlth), students have a right to access personal information that is held on school files about them. Schools will need to be mindful of this when preparing references for students.

Emergency, Casual and Relieving Teachers

Apart from administrative details, teachers who are not usually associated with the school, except on an irregular basis, need to be informed about any special matters concerning the classes and students with whom they will be associated. These matters include particular group behaviour, classes that have integrated students, students with medical conditions or a student's personal behavioural difficulties. The teacher should be made aware of any particular risk that may be associated with working with a specific class. Knowledge of these factors assists a teacher to fulfil the duty of care in a responsible manner. The coordinator responsible for the teaching area needs to be vigilant to the presence of a teacher who may be unfamiliar with procedures, especially emergency procedures.

Principals employing emergency or relieving teachers need to know adequate details of these teachers and should be provided with character references. For teachers who come on a sessional basis, e.g. teachers of a musical instrument or a particular sport, the principal needs to be assured of both the professional and personal qualities of that person.

Under amendments to the *Privacy Act 1988* (Cwlth), employers seeking information from casual and emergency relief teachers, contractors, and specialist teachers must take reasonable steps to make these people aware of the purposes for which the information is being collected, to whom the information will be disclosed, and their rights of access to that information. The school's 'Employment Collection Notice' should be issued to such people at the earliest stage of interaction. Further, the school should be mindful when collecting personal information (e.g. references, making notes and reports) that such people may seek access to the records of personal information held about them.

- **Refer to the CECV *Privacy Compliance Manual* distributed to all Victorian Catholic schools in November 2001. An example of a school Employment Collection Notice mentioned above is provided in this manual.**

Employment of Non-teaching Staff

Principals should be careful with the contracting of outsourced personnel. Not only should professional and technical qualifications be certified (and if necessary verified) but also the personal qualities of the person needs to be verified so that the principal will have confidence in that person's suitability to work within a school environment. If necessary, a further reference about a person through a Police Record check may help ascertain a matter. If the Criminal Record check is required to go beyond Victoria, then the appropriate jurisdiction needs to be contacted.

The principal ought to be able to ascertain that people who are working on the school property, even if employed by another employer, are suitable persons to be in contact with school children.

As noted above with regard to casual and relieving staff, the principal should be mindful when collecting personal information (e.g. references, making notes and reports) that non-teaching staff may seek access to the records of personal information held about them. Further, at the time of seeking such information, principals are required to inform such staff of the purposes for which the information is being collected, to whom the information will be disclosed, and their rights of access to that information.

Volunteers

As a matter of general principle, a school may be liable for the negligence of a volunteer, such as a parent, who is used by the school for the purpose of helping with the supervision of students on out-of-school activities. It would be prudent for schools to ensure that their public liability insurance cover provides indemnity in respect of the acts and omissions of volunteers who provide their services with the knowledge and approval of the school authority.

Principals should check and verify the character and abilities of volunteers, especially volunteers associated with young children. In addition, principals are reminded of the access, use and disclosure rights and obligations of the *Privacy Act 1988* (Cwlth). Essentially, the matters discussed above in relation to the personal information held

by schools about emergency, casual and relieving teachers, as well as non-teaching staff, applies to volunteers.

Criminal Record Checks

In accordance with CECV Policy 1.22, [Criminal Record Checks](#), a police record check is compulsory for:

- new employees of Catholic schools in Victoria;
- current employees transferring to another school or being promoted to a new position within their current school;
- teachers undertaking casual or relief teaching;
- volunteer staff and adults whose work involves direct contact with students in situations not under the direct supervision of a teacher or other responsible officers of the school.

There are additional categories of people for whom a criminal record check may be desirable as a matter of local school policy. These include those who work on the school premises and may be in contact with children or handle school property, such as job skills participants, volunteers and after-care workers.

School practices should be developed that allow sufficient time for a criminal record check to be carried out before a prospective employee commences duty.

Schools are advised to observe the procedures outlined in CECV Policy 1.22 regarding the documentation, processes and fees required for criminal record checks.

Supervising Students In Classes

The duty of the teacher includes exercising reasonable supervision in the classroom. The degree of supervision depends on the factors making up the class. These factors include age, sex, linguistic abilities, aids to be used, type of class (e.g. technology, domestic sciences, laboratory work, physical education, the arts) the behaviour of students, and students with particular needs (e.g. students with disabilities or integration students, gifted students, new arrival students).

In order to respond responsibly and reasonably, teachers need to be aware of group dynamics within the particular class, especially situations that may develop into harassment, intimidation, victimisation, physical violence, fighting, misbehaving, throwing objects or argumentation. Among younger students in particular, the teacher needs to be vigilant that none of the students leave the room without permission.

Teachers are responsible for the group of students that they have been allocated to teach and/or supervise at a particular time. This includes the time when a student may be in the class or has withdrawn from the class for a reason. Some examples are:

- If a student is ill and goes to a sick bay, the teacher is still responsible for supervision of the ill student, even if another staff member supervises sick bay, unless the principal has made another supervisory arrangement;
- If a student leaves a class to be collected by a parent/guardian, that student is still under the supervision of the teacher until the parent/guardian takes over the

supervisory role. The time that a student waits in an area to be collected is a time that the teacher still has a duty of care;

- If a student goes to a toilet, then that time is within the supervision of the teacher.

The supervisory duty of a teacher is never replaced by the presence of a non-teaching staff member or a student teacher, nor can the supervision be delegated to another teacher without proper authority.

All students requesting permission to leave school property during school hours need to provide an appropriate written request from their parent/guardian specifying the details of the request. The request should state who will be responsible for collecting the student as well as the appointed time. For a secondary student, the parent/guardian will need to provide written permission for the student to leave the school independently.

Primary students, because of their young age and sometimes their inability to appreciate possible dangers, need to be supervised at all times. As students develop, the need for close and direct supervision may gradually become less.

Secondary students, especially the more senior students, may require less direct supervision. For example, senior students may leave the school premises without the supervision of a teacher for an interview, for an educational or sporting activity or for another reason that has been permitted by the parent/guardian and approved by the school. The school principal will decide the degree of supervision necessary.

Supervising Students Out of Class

The duty of the principal includes providing adequate supervision of students at all times as well as a safe and secure school environment. Supervision of out-of-class activities includes the development of emergency plans and risk management plans that will assist supervising teachers to respond in adequate and reasonable ways.

Students must be adequately supervised at all times during recesses, lunch breaks and times when out of class.

The degree and type of supervision will depend upon the number of students, the school environment, the weather, age of students and special localised factors (e.g. potentially dangerous sites, proximity to busy roads, ease of supervision, group dynamics). Being a supervising teacher requires vigilance and awareness of what is happening at all times. If a potentially dangerous situation occurs, the teacher should respond quickly to prevent any incident or accident occurring. As well, the school office needs to be informed by quick means of any incidents that may potentially become larger problems.

During breaks in the school day when sporting activities occur with minimal supervision (such as lunch break), the supervising teachers owe a duty of care to all students. Therefore school policy as well as the availability of supervisory teachers at any time should guide the type of sporting activity permitted. Students should be encouraged to wear protective gear whenever playing a sport that could cause possible injury without the use of protective gear.

- **Guidance on the appropriate minimum staff-student ratios for out-of-school activities was distributed to all Victorian Catholic**

schools in May 2002, in a document entitled Supervision of Students and Staff-Student Ratios for Camps, Excursions and Outdoor Activities. Any subsequent amendments to the current minimum staff-student ratios will be made available to schools via Catholic Education Office mailouts and the CEVN.

Supervision Before and After School

Schools need to establish the time of opening and closing and inform the parent/guardian of these times. The opening time designates the time that authorised supervision commences and the closing time designates the time that authorised supervision ceases. However, the Courts are likely to hold that a teacher owes a duty of care to a student wherever the relationship between a teacher and student exists (e.g. High Court decision *Geyer v Downs* (1977) 138 CLR 91).

If students are on the school property outside the designated times, with the knowledge of the school or of a teacher, then it may certainly be held that the duty of care continues to exist. Students who arrive at school prior to official opening time or are on the school property after official closing time may still require some supervision. The duty of care still exists if a teacher is present at the school. Advising the parent/guardian that students are not allowed on school property after closing time or prior to opening does not remove the duty of care that a teacher or school owes to the student.

Before and after school, students (particularly young students) should be watched near roadways and danger areas. A decision of the New South Wales Court of Appeal in the matter of *Trustees of the Roman Catholic Church for The Diocese of Bathurst v Koffman and Anor* (1996) found that the school was liable for injuries caused to a primary student when that student was over three hundred metres away from the school awaiting a bus near a high school. The student was struck in the eye with a stick by some high school students. The decision of the Court indicated that the responsibility of the school extended beyond the school fence perimeter. In this case the school should have been aware that its students needed supervision when waiting for the bus because of the possibility of harm from the high school students (ATR (1996) pages 380–393).

The parent/guardian needs to be given advance notice as to any change of hours to school opening and finishing, days of school closure and any change of program that will change usual times for dismissal of students. Prior to the commencement of the school year, the parent/guardian should be informed in writing of the official hours the school is opened.