

Relationship to other policies:

This policy is to be read in conjunction with the Camping Policy and Excursions Policy. This policy supersedes the On-Site Supervision Policy.

Purpose:

- To explain the nature of the legal duties owed by teachers and school staff towards students;
- To ensure that the Bonbeach Primary School staff conduct themselves at all times consistently with these legal obligations and responsibilities; and
- To provide adequate and appropriate supervision of students in the school yard.

Bonbeach Primary School is committed to ensuring that Ministerial Order 870 – Child Safety Standards are adhered to at all times.

Legal background

“Duty of care” is an element of the tort of negligence (involving harm by carelessness, not [necessarily] intentional harm). 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; and
- 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 required by schools

Principals and teachers are held to a high standard of care in relation to students.

The principal is responsible for:

- 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; and
- 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 6s 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; and
- 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 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*.

- 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.

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.

Implementation:

- Supervision of students is the responsibility of all staff.
- A roster system will be used to timetable staff members for yard supervision.
- Yard supervision will include before school (8:45am – 9am), recess (11:30am -11:45 am and 11:45am -12pm) and lunch breaks (1:40-2:10pm and 2:10pm – 2:40pm), and after school (3:30 – 3:45pm).
- Parents will be informed regularly via the newsletter that staff members are not rostered to take yard duty until 8:45am each morning. Parents are discouraged from sending their children to school before this time. Students arriving at school before a reasonable time (which the school has determined will be more than 15 minutes) will be sent to the Before School Care Program, and parents charged fees in accordance with the Before School Care Provider Fees Policy.
- Parents will also be informed via the newsletter that staff members will not be rostered to undertake yard supervision after 3:45pm each day. Parents are required to make sure that their children have been collected or have left the school grounds by this time. Students still in or about the school yard after that time (indicated by the 3:45pm bell) will be brought to the school office by the supervising teacher and parents contacted. If parents cannot be contacted, and/or the Office will be unattended, the students will be sent to the After School Care Program and parents charged fees in accordance with the After School Care Provider Fees Policy.
- The yard supervision roster will basically require staff members to undertake yard duty before school, for half of recess or half of lunchtime, or after school on specific days.
- An open and equitable process for coordinating the roster, and for negotiating specific duty times or days with individual staff members. Final approval is the Principal's responsibility so as to ensure adequate supervision.
- Yard duty staff members will be provided with a bum bag containing basic first aid supplies, pad and pencil, and an operable cordless phone or walkie talkie.
- Yard duty staff members will keep a record of individual student behaviour.
- Casual Relief Teachers will be responsible for the yard duty responsibilities of staff members they are replacing or as directed by the Principal.
- Staff members who are aware that they cannot fulfil their yard duty obligations due to appointments or excursions etc. are required to either make a swap with another staff member, or discuss the matter with the coordinating teacher or principal.
- Staff are to use hats and sun block for periods of hot weather usually Terms 1 and 4.
- Staff on yard supervision must approach intruders or unknown people in the yard and contact the office to seek assistance.
- Staff members have a legal responsibility to be prompt at arriving at their yard duty location on time, and must ensure that all students have left the yard before completing their roster at the end of recess, lunch and end of day.

Evaluation:

To be reviewed as part of the school's three year review process.

Approval:

This policy was approved by the School council on 14th November 2017

