



# St Ambrose Parish School

## Student Duty of Care (Summary)

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### **Background**

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 Ambrose's Parish Primary School's policies and practices.

This policy attempts to explain, in plain English:

- 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.

### **Source of Obligation**

The Education Training and Reform Regulations 2017 (sch 4 cl 12) require that the school must ensure that the care, safety and welfare of all students attending the school is in accordance with any applicable state or Commonwealth laws, and that all staff are advised of their legal obligations under those laws.

Under the Guidelines St Ambrose's Parish Primary School is required to provide evidence in the form of the School's policies and procedures with respect to the duty of care owed to students.

### **Duty of Care owed to Students**

St Ambrose's Parish Primary School, its Principal and its staff owe a duty to take care of students whilst they are involved in school activities, or are present for the purposes of a school activity whether at the school or at a location outside the school. This duty of care cannot be assigned to another party.

In accordance with the Guidelines, the school's duty extends to taking:

- reasonable measures, with regard to all the circumstances, to protect students from risks of harm and injury that should have been reasonably foreseen; and

- take reasonable care that any student (and other person) on the premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the premises.

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.

### **Standard of Care: Teaching staff**

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.

### **Standard of Care: Non-Teaching Staff, Volunteers & External Providers**

Non-teaching staff, volunteers (including parent volunteers) and external providers also owe a modified duty of care to protect students from risks of harm that reasonably ought to be foreseen. This duty is only undertaken when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or provider, and accepted by that individual.

For example, a teacher may ask a non-teaching staff member to accompany a student to a different area of the school. While normally, this staff member may not owe a standard duty of care to that student, as they have accepted the duty to care for and supervise the student passed from the teacher, they now must protect that student from foreseeable risks of harm.

### **Students' Individual Circumstances**

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 (e.g. 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 Duty of Care Responsibilities- Our Risk Based Approach**

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

Non-teaching staff, volunteers and external providers must exercise judgment appropriate in the circumstances.

To assist the school to discharge its safety responsibilities, St Ambrose’s Parish Primary School has developed an Occupational Health & Safety Program through which potential safety hazards are identified and analysed in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur. A similar risk based approach is taken with respect to Student Duty of Care, with the definitions of likelihood and consequences together with the Risk Matrix used in our Workplace Safety Program, for the purpose of assessing student safety risks.

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. All policies relating to student safety are set out under the Student Duty of Care menu on our intranet.

It is important that all staff consistently enforce school rules and safety policies, and actively engage in ensuring the physical and emotional wellbeing of students.