## LEGAL RESPONSIBILITIES FOR DUTY OF CARE FOR STUDENTS

### DIOCESE OF WAGGA WAGGA

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LEGAL RESPONSIBILITIES FOR DUTY OF CARE FOR STUDENTS FOR DIOCESAN SYSTEMIC SCHOOLS

Preamble

The law regards the teacher-student relationship as having a special welfare component. This means that teachers have a ‘duty of care’ to protect their students from reasonable foreseeable injuries.

Whether the duty of care has been broken depends on the particular facts of each case.

Teachers who act carefully and sensibly, and plan and supervise activities properly, should not fear being sued for injuries suffered by students.

The School’s Duty of Care

Includes:

- Adequate supervision of students,
- Protecting students for dangerous situations and activities,
- Maintaining safe premises and equipment, and
- Protecting students from bullying and excessively rough play by other students.

When is the Duty of Care Owed?

Schools and teachers have a duty of care to students whenever the school is exercising control over students’ actions. This includes:

- In classrooms, laboratories ie: anywhere curricula or co-curricula activities are taking place.
- In outdoor and indoor play areas.
- During sport and physical education activities.
- When students are moving about the school.
- When students are travelling to or playing school sport away from the school, and
- During excursions and school camps.

Before and After School

Court cases have decided that duty of care can arise before school, but have not indicated a precise starting time for this duty. Courts have also ruled that duty can extend beyond the school gate before and after school, but they have not indicated how far from the school gate it extends or for how long.

In one court case a court found that the school should have provided supervision for students at a bus stop 300 metres from the school. In another case, a court found that the
school should have attempted to supervise Year 12 students outside the school gate on their end of year “muck up” day.

Senior students are not exempt from duty of care, and schools need to adopt a supervision policy and communicate it to parents. Teachers should comply with the policy. The policy should:

- Explain the supervision provided before and after school and on bus stops
- Be clear and appropriate

**General Policy on Legal Responsibilities and Authority**

Teachers need an adequate knowledge of the legal requirements that affect their relationships with others, particularly pupils. They have a legal responsibility to put into practice those procedures calculated to prevent physical harm befalling their pupils.

Principals have additional responsibilities because of their position, and they require a more thorough knowledge of legal issues. In addition, they must ensure that the procedures mentioned earlier are established and maintained.

**Teachers:**

- Owe their students a duty of care, because of the teacher-pupil relationship. This is described by courts as the care that prudent parents would take of their own children. This is a legal responsibility and cannot be renounced.
- Acquaint themselves and their students with school rules and regulations.
- Appreciate that authority is not confined to the classroom nor is it restricted to the hours of formal instruction. It extends to those situations where the good name of the school is served by teacher involvement.
- Have a duty to protect the moral welfare of any students in their care.

**Principals:**

- Ensure that all staff know what is required of them, both inside and outside the classroom, and that they fulfil their duties fully.
- Keep parents advised about school rules and regulations.
- Have a duty to protect the moral welfare of any students in their care.

**Supervision**

In determining the level of supervision expected from each teacher, the principal must consider several points:

- The age of the children;
- Their interests and capabilities;
- The type of activity being supervised.
Effective supervision involves enforcing the school’s safety regulations and using professional judgement to foresee likely risks to students’ safety.

**Liability of Teachers**

Teachers can be held liable for two different classes of injuries incurred by the students in their care:

- Injuries incurred because of teacher negligence;
- Injuries due to improper action by a teacher.

Teachers are not liable for the injuries incurred by their students as a result of an accident.

**Accidents and Negligence**

Students often suffer injuries, sometimes slight, sometimes serious, because of some accident. These chance occurrences, while regrettable, are not due to carelessness by the teacher. However, the teacher needs to act responsibly. In such cases, action can be taken against a teacher for negligence. A decision about negligence is made by the court, in the light of the evidence of each particular case. No-one else has the authority to decide if an action occurred through negligence.

**Meaning of Negligence**

For an action in negligence to succeed, the court must be shown that the injury which occurred was due to a breach of the teacher’s duty of care and that it was foreseeable. If teachers have exercised their duty of care, defined as the “care of a reasonable parent”, negligence will not be proven.

**Vicarious Liability**

If a teacher is accused of negligence (a civil offence), the Diocese will be liable for damages. The principle of vicarious liability states that the employer is responsible for a civil wrong committed by the employee in the performance of official duties. The Diocese (through the Trustee) would be joined as a defendant in a negligence case and a solicitor would usually be appointed to represent the teacher.

**Official Duties Explained**

The support available from the Diocese, through the Trustees, extends to any teacher engaged in official duties on behalf of the employer. This includes such actions as classroom teaching, supervision of students during recesses, preparation at school, coaching of school sporting teams or cultural groups, supervision of sporting teams in approved competitions, and supervision on approved excursions. All such events must be
undertaken with the approval of the principal, and in the event of a court action arising, the principal will be asked to confirm that the duties were approved.

**Improper Actions by Teachers**

If an injury is incurred by a student as a result of an improper action by a teacher, such as a physical assault (a criminal offence), a charge may be laid against the teacher by the police.

**Loss of Support for Improper Actions**

The principle of vicarious liability does not apply in the case of a criminal offence, and in such cases the Diocese, through the Trustees, might decide not to support the teacher in any way.

Teachers need to:

- Exercise duty of care, defined as the “care of a reasonable parent”.
- All school events must be undertaken with the approval of the principal.

Principals must approve all school events including actions associated with classroom teaching, supervision of students during recesses, preparation at school, coaching of school sporting teams or cultural groups, supervision of sporting teams in approved competitions, and supervision on approved excursions.

**Out of School Hours or Off-School Campus Activities**

A teacher’s duty of care towards students exists wherever there is a teacher-student relationship. This is true not only during normal school routine, but also during camps and on excursions. If a foreseeable injury occurs as a result of a breach of this duty of care, a teacher may be sued for negligence.

The following code applies to all members of school staff and other accompanying adults on school-organised and Diocesan-approved excursions or sports visits, for the duration of the activity from the time of departure from the school to the time of arrival back at school. The code applies to the appropriateness of behaviour of participants while in accommodation during the excursion visit.

**Code of Behaviour: School Staff and Other Persons Attending School Excursions/Camps**

The principal must approve all visits and excursions and ensure that adequate numbers of adults accompany each party to ensure adequate supervision. In determining numbers, the principal must consider the age of the pupils, the size of the group, the activities to be undertaken, the venue and any other information available.
The excursion co-ordinator must ensure that all students and adult participants on the excursion are provided with all relevant details of the excursion, and that all have the opportunity provided to them to understand fully their rights, responsibilities, roles and duties.

The excursion co-ordinator must prepare a duty roster of nominated supervisors to ensure a sufficient number of adults are ‘on duty’ and/or ‘on call’ to provide appropriate duty of care to participating students. Designated/rostered supervisors and others ‘on call’ are not permitted to consume any alcohol whilst ‘on duty’ or ‘on call’.

Supervising teachers must:

- provide students and adult participants with the opportunity to understand fully their rights, responsibilities, roles and duties.
- communicate to all participants details of the supervision arrangements and appropriate standard of behaviour required to ensure the safety and welfare of students and adults in attendance.
- not consume any alcohol if designated/rostered as supervisor or ‘on call’ as a supervisor.
- not allow students to leave the excursion group without the permission of the designated supervising adult(s) in charge. This would involve knowledge of the itinerary/whereabouts of the student(s) appropriate supervision arrangements, and the arrangements for the student(s) return to the excursion group.

**Conduct Unacceptable on Excursion/Visits**

Consuming alcohol at an event where students are present:
Staff not rostered in duty of care roles may consume alcohol during dinner within the community standard guidelines for a blood alcohol level of 0.05 (grams of alcohol/100ml of blood).

**Consent Forms**

Wherever a school-endorsed activity takes place outside the school premises or outside normal school hours, consent forms must be obtained from the parent or guardian of each student.

Signed consent forms are one indication, in a court action for negligence, that a teacher has planned an activity carefully. It also shows that the parent or guardian was aware of the nature of the activity and consented for the child to take part in it.

**School-endorsed activities**

A school-endorsed activity is one which has a direct relationship to the school as evidenced by the presence of all of the following:
• Students come from the school/system;
• Student involvement is arranged by a member of the school/system community;
• The activity enriches students’ learning; and
• The activity is supervised by suitable and qualified personnel.

**Range of activities**

School endorsed activities shall include:

- Sport
- Excursions
- Overnight Camps
- Cultural Activities
- Work Experience

**Banned activities**

The following are banned as school-endorsed activities:

- Bungee jumping
- Gliding
- Hang gliding
- Ice climbing
- Rock fishing
- Skydiving
- Tobogganning/Snow sliding
- Scuba diving
Supervision

A teacher’s duty of care towards students exists while there is a teacher-student relationship. This is a true not only during normal school routine, but also during school-endorsed activities. If a foreseeable injury occurs as a result of a breach of this duty of care, an action for negligence may be commenced.

Supervision of students – Supervisors other than teachers

Principals have a duty to ensure that appropriate and adequate supervision by qualified personnel of students is organised for all school-endorsed activities. Teachers and supervisors should not be under the influence of alcohol whilst charged with the care of students. In the case of water activities, there must be somebody in attendance with current CPR accreditation.

As the opportunities for students to be involved in competitions and other activities increases, special arrangements requiring parents to provide transport and supervision of small groups of students may be necessary. (Refer to CEC NSW publication Student Safety in Schools) Appendix 6/7 must be completed prior to parents transporting students.

In general, while parents or other responsible adults may assist in the supervision of students, if a teacher is present then that teacher will be deemed responsible. If a serious injury occurred to a student, action may be taken against the school.

When parents are giving instruction in a specific skill or activity they should have suitable experience and/or knowledge and/or appropriate qualifications for that activity. In the case of a sporting activity, reference should be made to the guidelines as set out by the relevant governing body.

Supervising parents should be briefed on school protocols and expectations in relation to Duty of Care issues. These protocols should be written.

If students are required to travel to and/or convene at a venue away from the school, it is essential that, at all times, parents are fully informed about transport and supervision arrangements, and that they give their written consent for their children to leave the school, especially if the students are to be transported by a teacher or parent.

Insurance issues

In schools within the Diocese of Wagga Wagga, Public Liability cover has been taken out by the employer.

Employees of the system (teachers, aides, etc) are covered by compulsory Worker’s Compensation insurance.
Accidents to students (as opposed to incidents involving negligence by responsible adults) are only covered if the family has accident cover. CCI offers such cover for twenty four hours a day, seven days a week. It would be appropriate for principals to bring this to the attention of parents.

In the case of Work Placement, special cover is facilitated with schools by the Catholic Schools Office.

**Transport**

If private vehicles are required to transport students to off-school premises activities then:

- Drivers transporting students should supply for the school records, a copy of their driver’s licence, insurance certificate and registration details.
- The school does not accept liability for the cost of any damage which may occur in an accident because claims arising out of accident or injury in a private vehicle would be dependent upon the owner’s insurance;
- Learner drivers and Provisional drivers should not transport other students on school-related activities (Appendix 6 and 7).
Draft Circular Regarding School Hours

Dear Parent/Guardian

School hours and supervision of pupils

I am writing to clarify the position concerning the hours during which this school is conducted each day and for which period normal supervision of pupils is provided.

Lessons commence each morning at [9:00 am] and conclude at [3:30 pm] on Mondays to Fridays. The school grounds are open to pupils from [8:30 am (or a time being 30 minutes only prior to commencement of lessons)] each morning and remain open to pupils until [3:45 pm (or the time 15 minutes after lessons conclude)] each afternoon. At all times outside the period from [8:30 am] to [3:45 pm] on Mondays to Fridays, no supervision will be provided other than between those hours and no responsibility will be taken by the school for any consequence of the activities of pupils outside those hours.

Please assist the school in the interests of the pupils’ safety by ensuring that your child does not attend or remain in the precincts of the school outside the hours of [8:30 am to 3:45 pm] on Mondays to Fridays.

Special arrangements will be made in relation to authorised school activities which require attendance of pupils at the school outside these hours such as sports afternoons which conclude at [4:45 pm] and for which normal supervision will be provided until [6:00 pm] on [Wednesdays]. The school does not conduct sporting activities at weekends and, of course, does not accept responsibility or provide supervision for the activities of pupils at weekends.