

NADI SANGAM PRIMARY SCHOOL

JACK 'N' JILL KINDERGARTEN

Policy

This policy assists school staff to understand how to meet their legal duty of care to students.

Summary

- All staff working with students owe a duty of care to those students.
- All staff must take reasonable steps to reduce the risk of reasonably foreseeable harm to students.
- All staff must take reasonable precautions to minimize the risk of child abuse by an individual associated with the school.
- The requirement to take reasonable steps to reduce the risk of reasonably foreseeable harm, continues even when another party is involved (for example, a third party providing services for an excursion or school camp).
- In some circumstances, a school's duty of care will extend beyond school hours and outside of school grounds.

Details

School staff have a duty of care in relation to students. Head teacher, Assistant head teacher, teachers and other staff working with students must take reasonable steps to minimize the risk of reasonably foreseeable harm, including by:

- providing suitable and safe premises
- providing an adequate system of student supervision
- undertaking risk assessments for school activities and events
- implementing strategies to prevent reasonably foreseeable injuries, whether physical or psychological, to students (including injuries suffered as a result of bullying)
- ensuring that appropriate medical assistance is provided to a sick or injured student
- ensuring the school complies with the Child Safe Standards
- taking other reasonable precautions to minimize the risk of child abuse by an individual associated with the school
- implementing relevant Department and local school policies
- managing conduct and performance

This duty of care is non-delegable, meaning that it cannot be assigned to another party. However, this does not mean that only one person holds a duty of care to a particular student at any one time. Multiple staff may have a duty of care to the same student, with differing responsibilities and roles to play in relation to the school discharging its overall duty of care. The precise scope of the each staff member's duty of care may be different.

For example, the HT is not required to personally supervise every student at lunchtime to discharge their duty but instead is responsible for establishing and monitoring a system for supervision that is shared amongst staff. AHT may be responsible for preparing the yard duty roster and each staff member rostered onto yard duty will have a duty of care to take reasonable steps in relation to any foreseeable risks to students arising at lunchtime which may include:

- monitoring specific students where there are known risks

- generally monitoring all students and intervening where there is inappropriate student behavior
- responding to accidents and taking appropriate measures to follow up any incidents that have occurred, which may involve ensuring that the incident is reported to another staff member with responsibility for further action

Duty of care to students outside the school

In some circumstances, the duty of care owed by school staff will extend beyond school hours and outside of school grounds. Whether the duty extends outside of school hours or outside school grounds will depend on all the circumstances of each individual case, and the school staff members' knowledge of any reasonably foreseeable risks of injury.

For example, in some circumstances the school may be liable for injuries to students in the playground before school begins for the day if they occur during the period of time for which the school yard is supervised.

Policies and duty of care

School policies and guidance relating to the health, safety and wellbeing of students support school staff to meet their duty of care. Schools also have their own local policies that support staff to meet their duty of care, such as health policies, bullying prevention policies, yard duty and supervision policies, student wellbeing policies, and child safety policies. HT must have in place good systems to ensure the full and proper implementation of policies by all staff, as a reasonable step to prevent foreseeable harm.

If parents/carers or students make a claim of negligence against the school, the school's policies and the school's local policies, and evidence of the school's implementation of these policies, are often relied upon in the legal claim.

Legal background

'Duty of care' is an element of the tort of negligence. In broad terms, the legal position is that if a person is injured as a result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence. This has to be applied to ACCF using the appropriate forms within 24 hours stating the nature of accident.

To successfully bring a compensation claim in negligence, a person must establish on the balance of probabilities, that:

- a duty of care was owed to them at the time of the injury
- the risk of injury was reasonably 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 caused or contributed to the injury, loss or damage suffered

The fact that a duty of care exists does not mean that a school staff member will be liable for every injury sustained by a student. In order for the student to succeed in a negligence claim, all of the above elements must be established.